

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

ASHVIN DESAI,

DEFENDANT.

CASE NO. CR-11-846-EJD

SAN JOSE, CALIFORNIA

SEPTEMBER 19, 2013

VOLUME 8

PAGES 1289 - 1394

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF: U.S. DEPARTMENT OF JUSTICE
BY: MELISSA S. SISKIND
ROBERT KENNEDY
601 D STREET, NW, ROOM 7806
WASHINGTON, D.C. 20579

FOR THE DEFENDANT: MARTIN A. SCHAINBAUM APLC
BY: MARTIN A. SCHAINBAUM
ANDREW ALLEN
351 CALIFORNIA STREET, NO. 800
SAN FRANCISCO, CALIFORNIA 94104

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
TRANSCRIPT PRODUCED WITH COMPUTER.

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A P P E A R A N C E S: (CONT'D)

ALSO PRESENT:

U.S. TAX DIVISION
BY: SCHYLON L. LANE, PARALEGAL
601 D STREET, NW
ROOM 7115
WASHINGTON, D.C. 20004

LAFFER & GOTTLIEB
BY: MARTIN G. LAFFER, CPA
9454 WILSHIRE BOULEVARD
SUITE 920
BEVERLY HILLS, CALIFORNIA 90212

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
BY: MICHAEL HELGESEN, AGENT
1200 FIRST STREET NORTHEAST
SUITE 4200
WASHINGTON, D.C. 20002

INDEX OF PROCEEDINGS

FOR THE GOVERNMENT:

JAMES OERTEL

DIRECT EXAM BY MS. SISKIND
(RESUMED)

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1 SAN JOSE, CALIFORNIA

SEPTEMBER 19, 2013

2 P R O C E E D I N G S

3 (JURY IN AT 9:13 A.M.)

4 THE COURT: WE'RE BACK ON THE RECORD IN THE DESAI
5 MATTER. ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

6 WOULD YOU LIKE TO CONTINUE WITH YOUR EXAMINATION?

7 MS. SISKIND: YES, THANK YOU, YOUR HONOR.

8 **(GOVERNMENT WITNESS, JAMES OERTEL, PREVIOUSLY SWORN.)**

9 **DIRECT EXAMINATION** (RESUMED)

10 BY MS. SISKIND:

11 Q. GOOD MORNING, MR. OERTEL.

12 A. GOOD MORNING.

13 Q. AT THE END OF THE DAY YESTERDAY WE WERE TALKING ABOUT YOUR
14 CALCULATIONS OF INTEREST INCOME AND HIGH BALANCE, CORRECT?

15 A. CORRECT.

16 Q. AND REMIND THE JURY WHAT THE SOURCES OF INFORMATION THAT
17 YOU RELIED ON TO CALCULATE INTEREST INCOME AND HIGH BALANCE?

18 A. I RELIED ON THE HSBC SPREADSHEETS, THE ONES THAT WERE DONE
19 IN FREMONT; THE SCREEN SHOTS, AND THE -- I'M TRYING TO
20 REMEMBER. I CAN'T REMEMBER THE THIRD ONE.

21 Q. WELL, WAS THERE ANYTHING THAT WOULD REFRESH YOUR
22 RECOLLECTION WHAT THE THIRD ITEM THAT YOU RELIED ON WAS?

23 A. YES.

24 Q. AND WHAT WOULD REFRESH YOUR RECOLLECTION?

25 A. THE HSBC INTEREST STATEMENTS, I FORGOT.

1 Q. OKAY. AND ARE THOSE THE ONES IN EXHIBIT 137?

2 A. YES.

3 Q. AND, NOW, YOU TESTIFIED YESTERDAY THAT YOU FOUND SOME
4 DISCREPANCIES IN THESE DOCUMENTS; CORRECT?

5 A. RIGHT.

6 Q. FOR EXAMPLE, TRANSPOSED, FLIPPED, START, MATURITY DATES?

7 A. THAT'S RIGHT.

8 Q. AND ONE INSTANCE WHERE THE WRONG CURRENCY WAS USED?

9 A. THAT'S RIGHT.

10 Q. IN THOSE SITUATIONS WHERE YOU FOUND DISCREPANCIES, WERE
11 YOU ALSO ABLE TO LOOK AT THE SCREEN SHOT FOR THE HSBC COMPUTER
12 SYSTEM FOR THAT PARTICULAR DEPOSIT?

13 A. I ALWAYS RELIED ON THE SCREEN SHOTS WHERE THEY WERE
14 AVAILABLE FOR A PARTICULAR ITEM.

15 Q. AND ACCORDING TO THE TESTIMONY OF MS. KATJU AND MS. KUMAR,
16 THOSE SCREEN SHOTS COME FROM THE COMPUTER SYSTEM AT THE BANK IN
17 INDIA; IS THAT CORRECT?

18 A. THAT'S CORRECT.

19 Q. AND HOW LONG HAVE YOU BEEN A REVENUE AGENT?

20 A. TWENTY-SEVEN YEARS.

21 Q. AND IN THOSE 27 YEARS, HAVE YOU REGULARLY USED BANK
22 RECORDS TO CALCULATE UNREPORTED INTEREST INCOME?

23 A. YEAH. WELL, USUALLY I DON'T HAVE TO CALCULATE IT BECAUSE,
24 QUITE HONESTLY, INTEREST INCOME DOES NOT COME UP VERY OFTEN IN
25 MY CASES. IT'S USUALLY SOME BUSINESS INCOME OR SOMETHING LIKE

1 THAT.

2 Q. WELL, I SHOULD ASK THE QUESTION DIFFERENTLY. DO YOU
3 REGULARLY USE BANK RECORDS TO CALCULATE INCOME GENERALLY?

4 A. OH, YEAH, YEAH, I DO THAT EVERY DAY.

5 Q. AND DO BANK RECORDS SOMETIMES HAVE MISTAKES IN THEM?

6 A. HAVE WHAT?

7 Q. MISTAKES IN THEM?

8 A. OH, YEAH, I HAVE EVEN FOUND THEM IN MY OWN.

9 Q. BUT IN THIS CASE WAS THERE ANY TESTIMONY OR ANY EVIDENCE
10 INTRODUCED DURING THE TRIAL THAT WOULD CAUSE YOU TO THINK THAT
11 YOU SHOULDN'T RELY ON THE BANK RECORDS IN THIS CASE TO
12 CALCULATE INTEREST INCOME?

13 A. NO. THE ONLY THING MS. KATJU STATED WAS THAT THE
14 SPREADSHEETS THAT WERE MADE AT HSBC IN THE FREMONT OFFICE, SHE
15 SAID THAT THOSE WOULD BE CORRECT EXCEPT FOR ANY TYPE OF MANUAL
16 ERRORS. MANUAL ERRORS IS THE TERM THAT SHE USED.

17 Q. AND HOW DO YOU ACCOUNT FOR THOSE POTENTIAL MANUAL ERRORS
18 IN DOING YOUR CALCULATION?

19 A. I TAKE THEM OUT.

20 Q. ACCORDING TO THE TESTIMONY OF MS. KATJU AND MS. KUMAR, DID
21 THEY RELY ON THE SPREADSHEETS AND THE SCREEN SHOTS IN
22 PERFORMING THEIR DUTIES AS RELATIONSHIP MANAGERS?

23 A. YES.

24 Q. AND DOES THAT INCLUDE PROVIDING INFORMATION TO THE
25 CUSTOMERS?

1 A. YES, THAT'S WHAT THEY SAID THEY USED THEM FOR.

2 Q. AND ACCORDING TO THE TESTIMONY OF MS. KATJU, DID THE
3 DEFENDANT EVER COMPLAIN TO HER THAT THE INFORMATION THAT SHE
4 WAS PROVIDING TO HIM ABOUT HIS ACCOUNTS WAS INACCURATE IN ANY
5 WAY?

6 A. I -- NO.

7 Q. HOW LONG HAVE YOU BEEN ASSIGNED AS A SUMMARY WITNESS TO
8 THIS CASE?

9 A. ROUGHLY? SOMETHING LIKE A YEAR, I GUESS.

10 Q. AND DURING THE COURSE OF THAT YEAR HAVE YOU BEEN GOING
11 OVER YOUR CALCULATIONS OF INTEREST INCOME AND HIGH BALANCE?

12 A. YES.

13 Q. AND DID YOU DOUBLE-CHECK THOSE NUMBERS?

14 A. YES.

15 Q. AND TRIPLE CHECK THEM IN SOME CASES?

16 A. YEAH. QUADRUPLE CHECKED SOMETIMES, YES.

17 Q. AND OVER TIME DID YOU MAKE ANY CHANGES TO YOUR
18 CALCULATIONS?

19 A. OH, YEAH, SURE.

20 Q. AND THE CALCULATIONS THAT THE JURY SAW YESTERDAY IN
21 EXHIBITS 23 AND 24, IS THAT THE MOST UP-TO-DATE VERSION OF YOUR
22 CALCULATIONS?

23 A. YES.

24 Q. AND THE RESULT OF YOU QUADRUPLE CHECKING YOUR WORK?

25 A. YES.

1 Q. AND BEFORE I MOVE ON TO A DIFFERENT TOPIC TODAY, I WANT TO
2 MAKE SURE, FOR THOSE OF US IN THE COURTROOM WHO HAVE NEVER HAD
3 TO CALCULATE INTEREST INCOME BEFORE, THAT EVERYONE UNDERSTANDS
4 HOW YOU DID IT.

5 A. OKAY, SURE.

6 Q. AND IF YOU COULD START OUT BY VERY BASICALLY TELLING US
7 WHAT IS A CD?

8 A. A CD, THAT'S A TERM FOR CERTIFICATE OF DEPOSIT. YOU PUT
9 MONEY INTO A CD AND IT'S FOR A PARTICULAR PERIOD OF TIME,
10 SIX MONTHS, A YEAR, WHATEVER, AND THAT'S AT AN INTEREST RATE, A
11 FIXED INTEREST RATE.

12 Q. AND WHAT HAPPENS WITH THAT CD AT THE END OF THAT FIXED
13 PERIOD OF TIME?

14 A. THAT'S WHEN YOU GET PAID YOUR INTEREST.

15 Q. AND IS THAT ALSO CALLED MATURITY?

16 A. OH, YEAH, IT HAPPENS AT THE MATURITY DATE.

17 Q. AND IS THE INITIAL AMOUNT OF MONEY INVESTED IN THAT CD
18 CALLED THE PRINCIPAL?

19 A. THAT'S RIGHT.

20 Q. AND SO IF YOU KNOW THE PRINCIPAL FOR THE CD, THE TERM OF
21 THE CD, AND THE INTEREST RATE, CAN YOU CALCULATE INTEREST
22 INCOME?

23 A. SURE.

24 Q. IS THERE ANYTHING ELSE YOU NEED TO KNOW?

25 A. WELL, IF YOU KNOW HOW IT'S COMPOUNDED, IF IT'S COMPOUNDED

1 DAILY OR MONTHLY OR SOMETHING LIKE THAT. NOW --

2 Q. LET ME JUST STOP YOU, WHEN YOU SAY COMPOUNDED, CAN YOU
3 EXPLAIN WHAT THAT MEANS?

4 A. OH. WHENEVER YOU ARE EARNING INTEREST, INTEREST CAN BE
5 ADDED DAILY. THEY COULD TAKE WHATEVER THAT PRINCIPAL AMOUNT
6 IS, ADD A DAY'S WORTH OF INTEREST, AND THEN THE NEXT DAY TAKE
7 THE COMBINATION OF THE PRINCIPAL PLUS ONE DAY OF INTEREST AND
8 THEN ADD INTEREST TO THAT. THAT'S HOW YOU DO IT DAILY. OR YOU
9 CAN DO THE SAME SORT OF THING ON A MONTHLY BASIS, QUARTERLY,
10 WHATEVER THE TERMS ARE.

11 Q. AND WHEN DOING YOUR CALCULATIONS FOR THIS CASE, DID YOU
12 COMPOUND INTEREST DAILY?

13 A. YES.

14 Q. AND WHY DID YOU CHOOSE TO DO IT THAT WAY?

15 A. THAT TO ME JUST SEEMED LIKE THE MOST LOGICAL WAY TO DO IT.

16 Q. IS THAT THE WAY YOU'VE DONE IT BEFORE IN YOUR WORK AS A
17 REVENUE AGENT?

18 A. YES.

19 Q. WERE ALL OF THE DEPOSITS THAT YOU INCLUDED IN YOUR
20 CALCULATION YESTERDAY, WERE THEY ALL CD'S?

21 A. YES.

22 Q. AND FOR EACH OF THE DEPOSITS THAT YOU INCLUDED IN YOUR
23 CALCULATIONS, WERE YOU ABLE TO DETERMINE THE PRINCIPAL, THE
24 TERM OF THE CD AND THE INTEREST RATE FROM LOOKING AT THE
25 RECORDS?

1 A. YES.

2 Q. AND IF THERE WAS A CD THAT SHOWED UP IN THE RECORDS THAT
3 YOU WERE MISSING ONE OF THOSE THREE PIECES OF INFORMATION, DID
4 YOU INCLUDE THAT CD IN YOUR CALCULATION?

5 A. UM, NO. IF THERE WAS AN INCONSISTENCY BETWEEN THINGS,
6 THEN I WOULD TAKE IT OUT, BUT THERE WERE SOME INSTANCES WHERE
7 ONLY THE HSBC INTEREST STATEMENT WAS AVAILABLE.

8 Q. WHAT I'M ASKING YOU IS IF YOU WERE MISSING ONE OF THOSE
9 THREE PIECES OF INFORMATION, COULD YOU INCLUDE THAT CD IN YOUR
10 CALCULATION?

11 A. OH, NO, I COULDN'T DO A CALCULATION WITHOUT THAT.

12 Q. FOR THOSE CD'S -- WERE SOME OF THE CD'S IN THIS CASE HELD
13 IN SOMETHING OTHER THAN U.S. DOLLARS?

14 A. THAT'S RIGHT.

15 Q. AND IN THOSE INSTANCES WAS THERE ONE MORE STEP THAT YOU
16 HAD TO TAKE IN ORDER TO INCLUDE THAT CD IN YOUR CALCULATIONS?

17 A. WELL, YES, BECAUSE WE'RE DEALING WITH U.S. INCOME TAXES
18 HERE AND SO YOU HAVE TO USE AN EXCHANGE RATE TO GET IT FROM
19 WHATEVER FOREIGN CURRENCY IT IS, LET'S SAY INDIAN RUPEES, INTO
20 U.S. DOLLARS.

21 Q. IN ADDITION TO THE SCREEN SHOTS AND THE SPREADSHEETS AND
22 THE INTEREST CERTIFICATES, WERE THERE OTHER EXHIBITS INTRODUCED
23 INTO EVIDENCE THAT SHOWED DEPOSITS BEING PLACED INTO THE DESAI
24 FAMILY'S HSBC INDIA ACCOUNTS?

25 A. YEAH. LIKE THE TELEXES AND THINGS LIKE THAT, YEAH.

Q. AND IN TERMS OF NEAL DESAI'S HSBC INDIA ACCOUNT, WERE YOU ABLE TO USE THESE DEPOSIT RECORDS TO DETERMINE WHETHER NEAL DESAI HAD MORE THAN \$10,000 IN HIS ACCOUNT DURING 2009?

A. YES.

Q. AND I'LL DIRECT YOUR ATTENTION TO GOVERNMENT'S EXHIBIT 66.

A. OKAY.

Q. AND ACCORDING TO THE TESTIMONY AT TRIAL, WHAT IS THE FIRST PAGE OF EXHIBIT 66?

A. THIS IS WHAT THEY CALL A TELEX. THIS IS WHERE THEY WOULD GIVE INSTRUCTIONS TO U.S. OR HSBC INDIA ON WHAT TO DO WITH MONEY.

Q. DOES -- IN LOOKING IN THE MIDDLE OF THE PAGE ON THE TELEX, IS THERE A REFERENCE TO A DEPOSIT IN ACCOUNT 9689?

A. YES.

Q. AND WHAT NAME IS LISTED NEXT TO THAT?

A. NEAL D.

Q. AND WHAT IS THE PRINCIPAL AMOUNT OF THAT DEPOSIT?

A. \$250,000.

Q. AND WHAT ARE THE INSTRUCTIONS LISTED BELOW THAT?

A. "PLACE NRO CTD CUM FOR U.S.D. 250,000 FOR 400 DAYS."

Q. AND ACCORDING TO THE TESTIMONY AT TRIAL, WHAT DOES THAT MEAN?

A. THAT MEANS THAT YOU'RE GOING TO PUT IT INTO AN NRO CD FOR 400 DAYS.

Q. AND SO 400 DAYS WOULD BE THE TERM?

A. THAT'S RIGHT.

Q. AND WHAT IS THE DATE OF THIS DEPOSIT, LOOKING RIGHT BELOW THAT LINE?

A. FEBRUARY 9, 2008.

Q. AND SO FOR A CD BEING PLACED ON FEBRUARY 9TH, 2008, FOR 400 DAYS, IN WHAT YEAR WOULD THAT CD MATURE?

A. THAT WOULD MATURE SOMEWHERE AROUND THE MIDDLE OF 2009.

Q. AND DOES THAT ASSUME IT'S NOT BROKEN PREMATURELY?

A. THAT'S RIGHT.

Q. AND WHAT DOES IT MEAN TO BREAK THE CD PREMATURELY?

A. THAT MEANS TO TAKE THE MONEY OUT.

Q. AND WHAT WOULD HAPPEN WHEN THE CD MATURES IN 2009?

A. YOU WOULD GET PAID THE INTEREST.

Q. WAS THERE ANY EVIDENCE INTRODUCED AT TRIAL THAT THIS PARTICULAR DEPOSIT WAS BROKEN PREMATURELY?

A. NO.

Q. SO IN 2009 WHEN IT MATURED, WHAT WOULD THE VALUE OF THE CD BE?

A. IT WOULD BE \$250,000 PLUS WHATEVER INTEREST WAS EARNED.

Q. WERE THERE ANY OTHER RECORDS RELATING TO DEPOSITS MADE IN NEAL DESAI'S ACCOUNT DURING 2008?

A. YOU MEAN THE CHECKS?

Q. WELL, I'M ASKING WHETHER THERE WERE ANY OTHER EXHIBITS THAT SHOWED DEPOSITS INTO HIS ACCOUNT? AND I'LL DIRECT YOU TO EXHIBIT 69.

A. OH, YES. OKAY.

Q. ACCORDING TO THE TESTIMONY IS EXHIBIT 69 OR THE FIRST PAGE OF 69 ANOTHER TELEX?

A. YES, IT'S THE SAME TYPE OF TELEX.

Q. AND LOOKING IN THE UPPER RIGHT-HAND CORNER, WHAT IS THE DATE OF THIS TELEX?

A. UPPER RIGHT-HAND CORNER IT SAYS 05 MARCH 2008.

Q. MARCH 5TH, 2008?

A. THAT'S RIGHT.

Q. AND DO YOU SEE ANY REFERENCE IN THE MIDDLE OF THIS PAGE OF A DEPOSIT INTO NEAL DESAI'S HSBC INDIA ACCOUNT 9689?

A. YES.

Q. AND WHAT IS THE PRINCIPAL VALUE OF THAT DEPOSIT?

A. 200,000.

Q. AND ACCORDING TO THIS TELEX, IS THAT MONEY BEING PLACED IN A CD?

A. YES, AN NRO CD WITH A TERM OF 400 DAYS.

Q. AND SO ASSUMING IT WASN'T BROKEN PREMATURELY, ON WHAT DATE WOULD A CD PLACED ON MARCH 5TH, 2008, FOR 400 DAYS MATURE? IN WHAT YEAR?

A. AGAIN, SOMEWHERE AROUND THE MIDDLE OF 2009.

Q. AND WAS THERE ANY EVIDENCE INTRODUCED AT TRIAL THAT THIS DEPOSIT WAS BROKEN PREMATURELY?

A. NO.

Q. AND SO WHAT WOULD THE VALUE OF THIS DEPOSIT BE AT MATURITY

DIRECT CERTEL

1 DURING 2009?

2 A. IT WOULD BE \$200,000 PLUS THE INTEREST PAID.

3 Q. YOU COULD GO TO EXHIBIT 75, PLEASE?

4 A. OKAY.

5 Q. WHAT IS THE DATE ON THIS E-MAIL?

6 A. JUNE 16TH, 2008.

7 Q. AND GENERALLY WHAT DOES THIS DOCUMENT RELATE TO, THIS AND
8 THE ATTACHMENT?

9 A. IT IS --

10 Q. WHY DON'T YOU READ THE E-MAIL?

11 A. OKAY. ALL RIGHT. "DEAR TEAM, PLEASE FIND ATTACHED FCNR
12 PREMAT FOR THE ABOVE CUSTOMER."

13 Q. AND WHO WAS THE ABOVE CUSTOMER?

14 A. ASHVIN DESAI.

15 Q. AND IS AN FCNR, ACCORDING TO THE EVIDENCE, A TYPE OF CD?

16 A. YES.

17 Q. IF YOU CAN GO TO THE NEXT PAGE, DO YOU SEE A LETTER?

18 A. YES.

19 Q. AND CAN YOU PLEASE READ THE LETTER STARTING AT "DEAR SIR"?

20 A. "DEAR SIR, PLEASE BREAK WITH IMMEDIATE EFFECT. FCNR
21 NUMBER 004 --"

22 Q. YOU DON'T HAVE TO READ THE NUMBER.

23 A. OH, OKAY. AND THEN, "PROCEEDS TO BE ISSUED IN NRO
24 DEPOSIT."

25 Q. AND WHAT IS THE AMOUNT OF THE FCNR?

A. IT IS 185,000.

Q. AND LOOKING AT THE HANDWRITING NEXT TO THE NRO CD, INTO
WHAT ACCOUNT OF THIS NEW DEPOSIT OF \$185,000 BEING PLACED?

A. 9689.

Q. AND THAT'S NEAL'S DESAI'S ACCOUNT?

A. YES.

Q. AND ASSUMING IT'S NOT BROKEN MATURE -- ASSUMING IT WAS NOT
BROKEN PREMATURELY, IN WHAT YEAR WOULD A CD PLACED ON
JUNE 16TH, 2008, FOR 399 DAYS MATURE?

A. THE MIDDLE OF 2009.

Q. AND WAS THERE ANY EVIDENCE INTRODUCED AT TRIAL THAT THIS
DEPOSIT WAS BROKEN PREMATURELY?

A. NO.

Q. AND SO WHAT WOULD THE VALUE OF THIS DEPOSIT BE IN NEAL
DESAI'S ACCOUNT IN 2009 AT MATURITY?

A. 185,000 PLUS INTEREST.

Q. AND SO BASED ON EXHIBITS 66, 69, AND 75, CAN YOU ESTIMATE
WHAT THE HIGH BALANCE IN NEAL DESAI'S HSBC INDIA ACCOUNT WAS IN
2009?

A. IT'S 250, PLUS 200, PLUS 185 AND THAT EQUALS \$635,000,
PLUS THE INTEREST.

Q. AND DID NEAL DESAI'S 2009 INCOME TAX RETURN REPORT ANY
INTEREST INCOME FROM HSBC INDIA?

A. NO.

Q. AND WHAT WAS THE -- ON NEAL DESAI'S 2009 RETURN, WHAT

1 RESPONSE WAS GIVEN TO THE QUESTION ABOUT WHETHER HE HAD ANY
2 FOREIGN BANK ACCOUNTS?

3 A. THE BOX WAS CHECKED "NO."

4 Q. HAVE YOU ALSO LOOKED AT RECORDS FROM HSBC INDIA RELATING
5 TO DEPOSITS THAT WOULD HAVE MATURED IN AMI DESAI'S ACCOUNT
6 DURING 2009?

7 A. YES.

8 Q. AND DID YOU LOOK AT THOSE TO DETERMINE WHETHER SHE HAD
9 MORE THAN \$10,000 IN HER ACCOUNT DURING THAT YEAR?

10 A. YES.

11 Q. AND IF YOU COULD GO BACK TO EXHIBIT 66, PLEASE.

12 A. OKAY.

13 Q. DOES THIS TELEX ALSO SHOW A DEPOSIT BEING PLACED IN AMI
14 DESAI'S ACCOUNT 5163?

15 A. YES, IT DOES.

16 Q. AND WHAT IS THE PRINCIPAL AMOUNT OF THAT DEPOSIT?

17 A. 250,000.

18 Q. AND WHAT CURRENCY?

19 A. THAT IS IN U.S.D.

20 Q. U.S. DOLLARS?

21 A. YES, I'M SORRY, U.S. DOLLARS.

22 Q. AND WHAT IS THE TERM OF THAT DEPOSIT?

23 A. IT WAS 400 DAYS.

24 Q. AND REMIND THE JURY WHAT THE DATE ON WHICH THIS DEPOSIT
25 WAS PLACED IS?

A. FEBRUARY 29, 2008.

Q. AND SO, AGAIN, ASSUMING IT WASN'T BROKEN PREMATURELY, IN WHAT YEAR WOULD THIS DEPOSIT MATURE?

A. 2009.

Q. WAS THERE ANY EVIDENCE INTRODUCED AT TRIAL THAT THIS DEPOSIT WAS BROKEN EARLY?

A. NO.

Q. SO WHAT WOULD THE VALUE OF THIS DEPOSIT BE UPON MATURITY IN 2009?

A. \$250,000 PLUS INTEREST.

Q. AND IF YOU GO AGAIN TO EXHIBIT 69, DOES THIS TELEX THAT WE LOOKED AT A MOMENT AGO ALSO SHOW A DEPOSIT INTO AMI DESAI'S ACCOUNT?

A. YES.

Q. AND WHAT IS THE PRINCIPAL AMOUNT?

A. \$208,402.49.

Q. AND WHAT WAS THE DATE OF THE DEPOSIT?

A. THIS IS MARCH 5TH, 2008.

Q. AND WHAT WAS THE TERM OF THIS CD?

A. IT'S 400 DAYS.

Q. AND, AGAIN, ASSUMING IT WASN'T BROKEN PREMATURELY, IN WHAT YEAR WOULD THIS DEPOSIT MATURE?

A. 2009.

Q. AND WAS THERE ANY EVIDENCE THAT IT WAS BROKEN PREMATURELY?

A. NO.

Q. AND SO WHAT WAS THE VALUE OF THIS CD IN AMI DESAI'S ACCOUNT UPON MATURITY IN 2009?

A. 208,000 PLUS INTEREST.

Q. EXACTLY 208,000?

A. NO. \$208,402.49 PLUS INTEREST.

Q. AND SO USING EXHIBIT 66 AND 69 TOGETHER, CAN YOU ESTIMATE WHAT THE HIGH BALANCE IN AMI DESAI'S HSBC INDIA ACCOUNT WAS DURING 2009?

A. YES. IT WOULD BE OVER \$400,508,000 PLUS INTEREST.

Q. AND WAS ANY INTEREST FROM HSBC INDIA REPORTED ON AMI DESAI'S 2009 RETURN?

A. NO, NO, MA'AM.

Q. AND HOW WAS THE FOREIGN BANK ACCOUNT QUESTION ANSWERED ON SCHEDULE B?

A. "NO."

Q. AND, NOW, HAVE YOU ASSISTED IN THE PREPARATION OF A CHART THAT SUMMARIZED SOME OF THE INFORMATION THAT WE DISCUSSES TODAY AND YESTERDAY REGARDING THE DESAI FAMILY'S TAX RETURNS?

A. YES.

Q. AND DOES THAT CHART ALSO TAKE INTO ACCOUNT THE CALCULATIONS OF INTEREST INCOME THAT YOU PERFORMED?

A. YES.

Q. AND IF YOU COULD TURN TO WHAT HAS BEEN MARKED FOR IDENTIFICATION AS EXHIBIT 140?

A. OKAY.

Q. WHAT IS THE TITLE OF THIS CHART?

A. TAX RETURN SUMMARY.

Q. AND DOES THIS CHART FAIRLY AND ACCURATELY SUMMARIZE THE CONTENTS OF THE DESAI FAMILY TAX RETURNS ALONG WITH YOUR CALCULATIONS OF UNREPORTED INTEREST INCOME?

A. YES.

MS. SISKIND: YOUR HONOR, THE GOVERNMENT SEEKS TO INTRODUCE EXHIBIT 140 FOR DEMONSTRATIVE PURPOSES.

MR. SCHAINBAUM: YOUR HONOR, COULD WE HAVE A SIDE-BAR, PLEASE.

THE COURT: YES.

(SIDE-BAR CONFERENCE ON THE RECORD.)

THE COURT: WE'RE AT SIDE-BAR. MR. SCHAINBAUM.

MR. SCHAINBAUM: YES. AS YOU CAN SEE, YOUR HONOR, IT'S ILLEGIBLE, PLUS --

MS. SISKIND: IT'S NOT THE MOST UP-TO-DATE VERSION.

MR. SCHAINBAUM: IT'S NOT THE MOST UP-TO-DATE VERSION.

THE COURT: WE'LL GET YOU.

MS. SISKIND: WE HAVE THE MOST UP-TO-DATE VERSION. IT WAS GIVEN TO US THIS WEEK. REMEMBER WE PRINTED IT OUT WITH LEGIBLE HEADINGS.

THE COURT: CAN YOU SHOW HIM THIS ONE?

MS. SISKIND: YEAH, SURE.

THE COURT: IT SHOULD LOOK LIKE THIS (INDICATING).

1 MR. SCHAINBAUM: THE POINT IS THAT THE TAX RETURNS
2 SPEAK FOR THEMSELVES. THEY'RE IN THE RECORD. THEY DON'T NEED
3 TO HAVE A SUMMARY OF TAX RETURNS THAT ARE ALREADY IN EVIDENCE
4 PLUS OUR VERSION IS ILLEGIBLE.

5 SO BASED UPON THAT, I THINK THERE'S AN OVEREMPHASIS HERE
6 ON THESE TAX RETURNS, SUMMARIES WITH THE TAX RETURN
7 INFORMATION.

8 THE COURT: MS. SISKIND?

9 MS. SISKIND: YOUR HONOR, THERE'S AN EMPHASIS ON TAX
10 RETURNS BECAUSE THIS IS A CASE ABOUT TAX RETURNS AND THIS IS A
11 SUMMARY WITNESS, AND HE'S SUMMARIZING EVIDENCE. THIS HELPS
12 ELUCIDATE FOR THE JURY WHAT HIS SUMMARY IS. IT'S A VISUAL AID.

13 THE COURT: IT'S NOT GOING TO BE INTRODUCED INTO
14 EVIDENCE?

15 MS. SISKIND: NO. IT'S FOR DEMONSTRATIVE PURPOSES
16 ONLY.

17 MR. SCHAINBAUM: MY SAME POINT IS THAT HE CAN
18 TESTIFY FROM THE TAX RETURN ITSELF AND SAY, LOOK, HERE'S WHAT
19 THE INFORMATION SHOWS WITHOUT SUMMARIZING IT ON A PIECE OF
20 PAPER WHERE HE STATES THIS IS MY VIEW OF THE INTEREST INCOME AS
21 CALCULATED.

22 THAT'S NOT WHAT IS ON THE TAX RETURN, AND THAT'S PART OF
23 THIS TAX CASE IS TO DETERMINE WHETHER OR NOT THE INTEREST
24 INCOME WAS SUPPOSED TO BE REPORTED OR IS EXCLUDED FOR SOME
25 LEGAL REASON.

1 THE COURT: OKAY. ANYTHING FURTHER, MS. SISKIND OR
2 MR. SCHAINBAUM?

3 MS. SISKIND: NO, YOUR HONOR.

4 THE COURT: I'LL ALLOW THIS.

5 MS. SISKIND: YOU CAN HAVE MY COPY.

6 THE COURT: ASSUMING YOU GET THE CLEAN COPY. IT'S
7 FOR DEMONSTRATIVE PURPOSES ONLY TO ALLOW THIS WITNESS -- TO
8 ASSIST THIS WITNESS IN TESTIFYING ABOUT HIS FINDINGS. THIS IS
9 NOT GOING TO BE ADMITTED TO THE JURY.

10 YOU, OF COURSE, CAN CRITIQUE THIS AS YOU WISH AND YOU CAN
11 SUPPLY YOUR OWN SUMMARY IF THAT'S YOUR DESIRE AS WELL DURING
12 YOUR CASE IN CHIEF, IF THERE IS ANY.

13 MR. SCHAINBAUM: WELL, PICKING UP ON YOUR POINT,
14 THIS IS A TAX RETURN SUMMARY AND THE HEADING APPEARS TO BE THIS
15 IS WHAT THE TAX RETURN SHOWS.

16 IT'S REALLY WHAT HE INTERPRETS AS TO THE INTEREST INCOME
17 FROM HSBC INDIA, AND I THINK THAT HAS TO BE MADE CLEAR.

18 AND, YOU KNOW -- SO -- AND THIS SCHEDULE IS INACCURATE.
19 THE COLUMN THAT SAYS EXISTENCE OF FOREIGN ACCOUNTS LISTED ON
20 SCHEDULE B. AS YOU KNOW, I HAVE FROM TIME TO TIME TAKEN OUR
21 BLOWUP OUT AND THERE'S A BANK OF INDIA AND THE CITIBANK OF
22 SINGAPORE IS ON SCHEDULE B.

23 SO WHEN HE SAYS EXISTENCE OF FOREIGN ACCOUNTS AND HE PUT
24 ON SCHEDULE B -- NO, NO, NO, THAT'S COMPLETELY INACCURATE AND
25 MISLEADING AND DISTORTS THE EVIDENCE. SO THE BEST EVIDENCE IS

DIRECT CERTEL

1 THE TAX RETURN.

2 IF YOU LET THIS GO, THIS COLUMN IN THERE, THAT WOULD BE
3 REALLY PREJUDICIAL.

4 THE COURT: WELL, I THINK FROM WHAT I HEAR YOU
5 SAYING IS THAT YOU TAKE -- YOU PART COMPANY WITH THIS AND YOU
6 HAVE EVIDENCE TO REBUT THIS.

7 MR. SCHAINBAUM: NO. THE EVIDENCE IS, AGAIN, TO USE
8 HER WORDS, THIS IS A TAX CASE. THE TAX RETURN IS EVIDENCE AND
9 SCHEDULE B, UNLESS MY EYES ARE GOING, CONTAIN FOREIGN BANK
10 ACCOUNTS. AND THIS IS NO, NO, NO. THIS IS PRIMA FACIE
11 MISLEADING.

12 THE COURT: THIS IS HIS OPINION AND IF HIS
13 OPINION -- THIS IS HIS SUMMARY AND IF HIS SUMMARY IS MISLEADING
14 TO THE JURY, HE'LL BE ABLE TO POINT THAT OUT. THIS IS OFFERED
15 FOR -- THIS JURY MAY NOT ACCEPT THIS. THEY MAY HAVE THE SAME
16 OPINION THAT YOU DO.

17 MR. SCHAINBAUM: MAYBE I SHOULD GIVE THEM MY
18 MAGNIFYING GLASS BUT THIS IS A MISLEADING DOCUMENT, AND I
19 OBJECT AND IT'S PREJUDICIAL, EVEN THOUGH I WOULD CROSS-EXAMINE.
20 THIS SHOULD NOT EVEN BE PUT BEFORE THE JURY IN ANY FORM.

21 THE COURT: ALL RIGHT. THANK YOU, MR. SCHAINBAUM.
22 I'M GOING TO ALLOW IT, AND I NOTE YOUR OBJECTIONS. AND, OF
23 COURSE, YOU WILL HAVE AN OPPORTUNITY TO CROSS-EXAMINE AS YOU
24 WISH ON THIS, BUT WE NEED A CLEAN COPY OF THIS.

25 MR. SCHAINBAUM: THANK YOU, YOUR HONOR.

(END OF DISCUSSION AT SIDE-BAR.)

MS. SISKIND: MAY WE DISPLAY EXHIBIT 140 FOR
DEMONSTRATIVE PURPOSES ONLY?

THE COURT: YES.

BY MS. SISKIND:

Q. IS THIS YOUR SUMMARY OF INFORMATION REPORTED AND NOT
REPORTED ON THE DESAI FAMILY'S 2007 THROUGH 2009 RETURNS?

A. YES. IN REGARDS TO THE INTEREST INCOME, YES.

Q. AND WHAT YEARS DOES IT COVER?

A. 2007, 2008, AND 2009.

Q. AND WHAT TAXPAYERS ARE COVERED ON HERE?

A. ASHVIN, NILA, NEAL, AND AMI DESAI.

Q. AND THE THIRD COLUMN WHERE IT SAYS INTEREST INCOME
REPORTED ON SCHEDULE B. ARE THOSE THE NUMBERS THAT YOU HAD
READ OFF OF THE SCHEDULES B TO THE JURY YESTERDAY?

A. THAT'S RIGHT.

Q. AND WHEN IT SAYS INCOME FROM HSBC INDIA, WHERE DOES THAT
FIGURE COME FROM?

A. THAT CAME FROM MY SPREADSHEETS AND CALCULATIONS.

Q. AND IS THAT WHAT THE JURY SAW YESTERDAY IN EXHIBIT 23?

A. YES, MA'AM.

Q. AND THE COLUMN THAT ASKED ABOUT INTEREST INCOME FROM INDIA
REPORTED ON SCHEDULE B, WHAT DOES THAT MEAN?

A. THAT MEANS HOW MUCH FROM HSBC INDIA WAS REPORTED ON
SCHEDULE B AND IN EACH INSTANCE NONE WAS.

1 Q. AND THE COLUMN FOR EXISTENCE OF FOREIGN ACCOUNTS REPORTED
2 ON SCHEDULE B, DOES THAT REFER TO THE FOREIGN BANK ACCOUNT
3 QUESTION, QUESTION 7 (A) ?

4 A. CORRECT.

5 Q. AND SO LET'S START WITH 2007, FOR THE TAX RETURN FILED IN
6 THE NAME OF ASHVIN AND NILA DESAI. HOW MUCH INTEREST INCOME
7 WAS REPORTED ON THEIR SCHEDULE B AS FILED WITH THE I.R.S.?

8 A. \$20,125.90.

9 Q. AND HOW MUCH INTEREST INCOME DID YOU CALCULATE WAS
10 GENERATED BY THEIR TWO HSBC INDIA ACCOUNTS IN TOTAL?

11 A. \$338,287.38.

12 Q. WAS ANY AMOUNT OF THAT INTEREST INCOME REPORTED ON THEIR
13 2007 TAX RETURN?

14 A. NO.

15 Q. AND ON THEIR 2007 RETURN, HOW DID THE DESAIS RESPOND TO
16 THE QUESTION ABOUT WHETHER THEY HAD ANY FOREIGN BANK ACCOUNTS?

17 A. THEY SAID THEY DID NOT.

18 Q. FOR 2008 HOW MUCH INTEREST INCOME WAS REPORTED ON THE
19 DESAIS' SCHEDULE B?

20 A. \$23,052.40.

21 Q. AND ACCORDING TO YOUR CALCULATION, HOW MUCH ADDITIONAL
22 INTEREST INCOME WAS THERE FROM THEIR HSBC INDIA ACCOUNTS?

23 A. \$341,389.92.

24 Q. WAS ANY AMOUNT OF THAT INTEREST INCOME REPORTED ON THEIR
25 RETURN?

A. ZERO.

Q. AND HOW DID THE DESAIS RESPOND TO THE QUESTION ON SCHEDULE B ASKING THEM IF THEY HAD FOREIGN BANK ACCOUNTS?

A. THEY SAID NO.

Q. FOR 2009, HOW MUCH INTEREST INCOME WAS REPORTED ON THE DESAIS' JOINT TAX RETURN?

A. \$28,112.65.

Q. AND ACCORDING TO YOUR CALCULATIONS, HOW MUCH ADDITIONAL INTEREST INCOME DID THEY EARN FROM THEIR TWO HSBC INDIA ACCOUNTS?

A. \$430,384.45.

Q. AND WAS ANY AMOUNT OF THAT INTEREST INCOME REPORTED ON THEIR SCHEDULE B?

A. NO.

Q. AND HOW DID THE DESAIS RESPOND TO QUESTION 7(A) ABOUT WHETHER OR NOT THEY HAD FOREIGN ACCOUNTS DURING THAT YEAR?

A. THEY SAID THEY DID NOT.

Q. FOR 2009, HOW MUCH INTEREST INCOME WAS REPORTED ON NEAL DESAI'S SCHEDULE B?

A. \$6,371.88.

Q. AND, AGAIN, ACCORDING TO YOUR CALCULATIONS, HOW MUCH INTEREST INCOME WAS GENERATED BY HIS HSBC INDIA ACCOUNT?

A. \$103,495.07.

Q. AND WAS ANY OF THAT REPORTED ON HIS TAX RETURN?

A. NO.

Q. AND ON HIS RETURN ON SCHEDULE B, WHAT ANSWER WAS GIVEN TO THE QUESTION ABOUT WHETHER HE HAD A FOREIGN BANK ACCOUNT DURING 2009?

A. NO.

Q. AND FINALLY FOR AMI DESAI, HOW MUCH INTEREST INCOME WAS REPORTED ON HER TAX RETURN?

A. \$17,202.85.

Q. AND BASED ON YOUR CALCULATIONS, HOW MUCH INTEREST INCOME WAS GENERATED BY HER HSBC INDIA ACCOUNT?

A. \$32,653.74.

Q. AND DID ANY OF THAT AMOUNT APPEAR ON HER 2009 TAX RETURN?

A. NO.

Q. AND FOR THE FOREIGN BANK ACCOUNT QUESTION, QUESTION 7 (A) ON SCHEDULE B, WHAT BOX WAS CHECKED IN RESPONSE TO THE QUESTION IF SHE HAD FOREIGN ACCOUNTS, YES OR NO?

A. "NO."

Q. DURING THE COURSE OF THIS TRIAL, DID YOU HEAR TESTIMONY AND SEE DOCUMENTS RELATING TO THE DEFENDANT'S MANAGEMENT OF HIS HSBC INDIA ACCOUNT?

A. YES.

Q. AND DID YOU SEE DOCUMENTS AND HEAR TESTIMONY THAT SHOWED THE DEFENDANT MANAGING HIS WIFE'S HSBC INDIA ACCOUNT?

A. YES.

Q. AND HOW ABOUT HIS SON NEAL'S?

A. YES.

Q. AND HIS DAUGHTER AMI'S?

A. YES.

Q. AND HOW ABOUT HIS DAUGHTER AMI'S HSBC DUBAI ACCOUNT? DID YOU SEE DOCUMENTS THAT SHOWED HIM MANAGING THAT?

A. YES.

Q. DID YOU ASSIST IN THE PREPARATION OF CHARTS THAT SUMMARIZE SOME OF THESE EXHIBITS THAT SHOW THE DEFENDANT MANAGING HIS FAMILY'S ACCOUNTS?

A. YES.

Q. AND ARE THOSE CHARTS CONTAINED IN EXHIBITS 139-1 THROUGH 139-5?

A. YES.

Q. AND DO THOSE SUMMARY CHARTS LIST OUT VARIOUS EXHIBITS THAT WERE INTRODUCED AT TRIAL?

A. YES.

Q. AND DO EXHIBITS 139-1 THROUGH 139-5 FAIRLY AND ACCURATELY SUMMARIZE THE EXHIBITS THAT THEY REFERENCE?

A. YES.

MS. SISKIND: YOUR HONOR, THE GOVERNMENT SEEKS TO USE GOVERNMENT'S EXHIBITS 139-1 THROUGH 139-5 FOR DEMONSTRATIVE PURPOSES.

MR. SCHAINBAUM: YOUR HONOR, COULD WE HAVE A SIDE-BAR?

THE COURT: YES.

(SIDE-BAR CONFERENCE ON THE RECORD.)

1 THE COURT: WE ARE MEETING AT THE SIDE-BAR WITH
2 COUNSEL PRESENT.

3 MR. SCHAINBAUM: I THINK THE BEST EVIDENCE IS THE
4 EXACT EXHIBITS, IF THEY ARE, IN FACT, IN EVIDENCE AND TO USE
5 THESE SUMMARIES JUST EMPHASIZES DOCUMENTS THAT MAY OR MAY NOT
6 ACTUALLY BE IN EVIDENCE. SO I OBJECT ON THE CUMULATIVE EFFECT,
7 WHICH IS PREJUDICIAL.

8 IF SHE WANTS TO GO THROUGH THE EXHIBITS AND ASKS HIM ON A
9 ONE-ON-ONE BASIS, FINE, BUT TO PUT SUMMARY OF ACCOUNT ACTIVITY,
10 THAT ALSO ASSUMES A CONCLUSION. AND WHEN SHE PUTS ASHVIN DESAI
11 HSBC ACCOUNT 0046679, THAT'S JUST THE HEADING, BUT THE MOST
12 PROBLEM IS EACH OF THESE INDIVIDUAL DATES AND EXHIBIT NUMBERS
13 AND THE FACT THAT HE'S SAYING THAT THIS IS A SUMMARY OF ACCOUNT
14 ACTIVITY. WHAT ACTIVITY?

15 YOU KNOW, WHICH THE LEGEND HERE, IT HELPS HIM TESTIFY AS
16 TO, YOU KNOW, WHAT HE THINKS HAPPENED WITHOUT THE EVIDENCE.
17 THE BEST EVIDENCE IS EACH ONE OF THESE EXHIBITS.

18 THE COURT: LET ME ASK YOU, THESE CHARTS APPARENTLY
19 REFERENCE EXHIBIT NUMBERS?

20 MS. SISKIND: YES.

21 THE COURT: AND HAVE EACH OF THOSE EXHIBITS BEEN
22 ADMITTED INTO EVIDENCE?

23 MS. SISKIND: I BELIEVE SO. I CAN DOUBLE-CHECK
24 RIGHT NOW. IF FOR SOME REASON ONE IS NOT, WE WON'T USE THAT
25 CHART. IT CERTAINLY WAS OUR INTENTION TO. IF WE DIDN'T

DIRECT CERTEL
1 THEN --

2 THE COURT: WELL, WE SHOULD CLEAR THAT UP FIRST.

3 MS. SISKIND: YES.

4 THE COURT: THE OTHER QUESTION IS THAT THIS IS A
5 SUMMARY OF MR. DESAI'S ACTIVITY CONTROLLING THESE ACCOUNTS --

6 MS. SISKIND: YES.

7 THE COURT: -- ACCORDING TO WHAT THE EXHIBITS
8 INDICATE.

9 MS. SISKIND: YES.

10 THE COURT: AND I GUESS I WAS CURIOUS ABOUT THIS
11 WITNESS. AND I CERTAINLY UNDERSTAND HIS BACKGROUND AND HE CAN
12 TESTIFY AND PROVIDE SUMMARY EVIDENCE ABOUT THE TAX CALCULATIONS
13 AND THE INTEREST, BUT WHY IS IT NECESSARY TO HAVE HIM TESTIFY
14 SUMMARILY ABOUT THE ACTIVITIES?

15 MS. SISKIND: WELL, YOUR HONOR, HE'S A SUMMARY
16 WITNESS, AND I DON'T KNOW OF ANY RULE THAT LIMITS A SUMMARY
17 WITNESS TO NUMBERS. A SUMMARY WITNESS SUMMARIZES THE EVIDENCE
18 THAT CAME INTO TRIAL.

19 THE PURPOSE OF THIS SUMMARY IS TO HELP ORGANIZE FOR THE
20 JURY THE VARIOUS EXHIBITS THAT CAME IN BREAKING IT DOWN BY
21 WHICH ONES RELATE TO WHICH ACCOUNT NUMBER SO THAT THEY CAN SEE
22 MORE CLEARLY THE DEFENDANT MANAGING EACH FAMILY MEMBER'S
23 ACCOUNT.

24 I DON'T KNOW OF ANY RULE THAT PROHIBITS A SUMMARY WITNESS
25 FROM ORGANIZING THE EVIDENCE IN THAT WAY FOR THE JURY.

1 CERTAINLY A COMMON USE OF A SUMMARY WITNESS IS
2 CALCULATIONS, BUT HE'S HERE TO SUMMARIZE THE EVIDENCE.
3 CERTAINLY THE DEFENSE'S SUMMARY WITNESS, IF THEY CALL ONE, IS
4 FREE TO DO THE SAME THING AND INTERPRET THE RECORDS IN A
5 DIFFERENT WAY.

6 BUT AS OUR ULTIMATE WITNESS WHO IS SUMMARIZING THE
7 EVIDENCE FOR THE JURY, ALL OF THE TYPES OF EVIDENCE, BOTH
8 DOCUMENTS AND CALCULATIONS, HE SHOULD BE PERMITTED TO DO JUST
9 THAT AND SUMMARIZE THESE EXHIBITS.

10 THE COURT: I APPRECIATE THAT. WHAT I DON'T WANT IS
11 TO HAVE A WITNESS FROM EITHER SIDE GET UP AND JUST REHASH WHAT
12 THE JURY HAS ALREADY HEARD.

13 MS. SISKIND: NO. AND THAT'S THE -- THE PURPOSE.

14 MR. SCHAINBAUM: THAT'S WHAT --

15 MS. SISKIND: AND THE PURPOSE IS THAT THESE ARE NOT
16 REHASHING THEM IN THE WAY THEY WERE PRESENTED. THEY'RE
17 ORGANIZING THEM BY ACCOUNT NUMBER, AND IT DEMONSTRATES FOR THE
18 JURY THE DEFENDANT MANAGING EACH SEPARATE ACCOUNT THAT IS AT
19 ISSUE IN THIS CASE.

20 THE COURT: AND THAT'S RELEVANT BECAUSE?

21 MS. SISKIND: BECAUSE THE DEFENDANT IS NOT CHARGED
22 WITH JUST FILING HIS OWN TAX RETURNS BUT AIDING AND ASSISTING
23 IN THE PREPARATION OF HIS CHILDREN'S TAX RETURNS.

24 IT'S GOING TO REQUIRE THAT THE GOVERNMENT PROVE THAT HE
25 KNEW HIS CHILDREN HAD BANK ACCOUNTS IN INDIA AND THAT HE WAS

DIRECT CERTEL

1 INVOLVED IN THEIR ACTIVITY. IT GOES TO BOTH.

2 BUT IF THE DEFENDANT DIDN'T KNOW, LET'S SAY, HIS DAUGHTER
3 HAD AN ACCOUNT AND THE WILLFULNESS WITH RESPECT TO THAT
4 ACCOUNT.

5 THE COURT: AND THESE ARE SUMMARIES WITH RESPECT TO
6 HIS ACTIVITY AS TO HIS CHILDREN'S ACCOUNT AND HIS ACCOUNT?

7 MS. SISKIND: AND HIS WIFE'S AS WELL.

8 THE COURT: AND HIS WIFE'S AS WELL.

9 MR. SCHAINBAUM.

10 MR. SCHAINBAUM: WELL, IF YOU REALLY WANT -- THIS IS
11 CLOSING ARGUMENT HAVING A WITNESS PARROT WHAT WAS ALREADY IN
12 EVIDENCE, BUT GIVEN WHAT THE GOVERNMENT HAS SAID, THAT'S WHAT
13 IS SUPPOSED TO HAPPEN. I OBJECT THAT IT'S OVEREMPHASIS, IT'S
14 PREJUDICIAL, AND IT'S OUTSIDE THE BOUNDS OF THE SUMMARY WITNESS
15 BECAUSE HE'S REALLY PARROTING WHAT IS ALREADY IN EVIDENCE AND
16 IT'S FOR THE JURY TO DETERMINE BASED UPON THE EVIDENCE WHERE
17 IT'S TO GO.

18 THE COURT: THANK YOU. WHAT I DON'T WANT TO DO IS
19 TO HAVE A SUMMARY WITNESS JUST GET UP AND JUST RE-TESTIFY AS TO
20 HIS SUMMARY OF EVERY WITNESS'S TESTIMONY. THAT'S NOT
21 APPROPRIATE.

22 MS. SISKIND: AND I SHOULD POINT OUT THERE'S
23 SOMETHING HE'S GOING TO DO WHICH IS ACTUALLY DIFFERENT. THE
24 COURT PROBABLY RECALLS THAT SEVERAL OF THE DOCUMENTS WE PUT IN
25 HAVE CURRENCY CONVERSIONS, AND HE'S DONE THAT SAYING WHEN THE

1 DEFENDANT IS PLACING A 25 MILLION RUPEES AND WHAT IT IS AND THE
2 CONVERSION AND IT'S GOING TO BE HELPFUL TO THEM.

3 IT'S NOT MY INTENTION TO HAVE HIM READ OFF EACH OF THESE
4 DOCUMENTS, JUST TO GO TO THE CHART AND REFER TO CERTAIN ONES
5 AND WITH RESPECT TO CURRENCY WHERE HE HAS DONE SOME KIND OF A
6 CONVERSION FOR.

7 THE COURT: SO IN THAT CONTEXT HE'S TESTIFYING NOT
8 AS A SUMMARY WITNESS BUT AS A WITNESS WHO DID HIS OWN
9 EXAMINATION AND HIS OWN CALCULATION OF THE EXCHANGE RATE?

10 MS. SISKIND: CORRECT.

11 THE COURT: AND SO THAT'S NOT SUMMARY EVIDENCE;
12 THAT'S DIRECT EVIDENCE --

13 MS. SISKIND: THAT IS DIRECT EVIDENCE, YES.

14 THE COURT: -- FROM HIM. SO I THINK WE NEED TO
15 DISTINGUISH THAT. I DON'T THINK THERE'S BEEN ANY TESTIMONY
16 FROM ANYBODY ABOUT THE CALCULATION OTHER THAN THE RATE, BUT
17 THERE'S BEEN NOBODY WHO SAYS WHAT THE ACTUAL RESULT OF WHAT
18 THAT IS.

19 MS. SISKIND: AND THAT'S HELPFUL FOR THE JURY TO
20 UNDERSTAND THESE DOCUMENTS, SINCE THEY CAN'T DO THEIR OWN
21 CALCULATIONS.

22 THE COURT: SO I THINK YOU NEED TO, WHEN YOU EXAMINE
23 HIM, I THINK WE NEED TO DISTINGUISH THAT HE'S A SUMMARY
24 BASICALLY DOING HIS SUMMARY REPORTING OF HIS ANALYSIS HOWEVER
25 HE'S DONE INDEPENDENT CALCULATION OF THE EXCHANGE RATE.

1 AND I'LL BET MR. SCHAINBAUM WILL WANT TO VOIR DIRE HIM ON
2 HIS KNOWLEDGE AND UNDERSTANDING OF THE EXCHANGE RATE. I THINK
3 HE DID TESTIFY HE WENT TO SOME WEBSITE.

4 MS. SISKIND: PUBLICLY AVAILABLE WEBSITE.

5 THE COURT: I THINK HE DID DO THAT, RIGHT. AND SO
6 WHATEVER INFORMATION HE GETS FROM THAT IS SUBJECT TO CRITICISM
7 OR ACCEPTANCE, I SUPPOSE.

8 MS. SISKIND: AND, YOUR HONOR, IF I COULD JUST POINT
9 OUT, THE OTHER DAY IN RESPONSE TO A REQUEST FROM MR. ALLEN WE
10 PROVIDED THE DEFENSE WITH A MORE LEGIBLE COPY OF THESE
11 EXHIBITS.

12 MR. SCHAINBAUM: IS THERE A MORE LEGIBLE COPY?

13 MS. SISKIND: NO, IT IS. WE PROVIDED THEM. I DON'T
14 KNOW WHY THEY DON'T HAVE THEM, BUT WE PROVIDED THEM.

15 THE COURT: DO YOU HAVE THEM, MR. ALLEN?

16 MR. ALLEN: I DO AGREE WITH THE GOVERNMENT THAT THEY
17 DID PRODUCE SOME MORE LEGIBLE COPIES OF CERTAIN DOCUMENTS. TO
18 THE BEST OF MY KNOWLEDGE RIGHT NOW, I DON'T KNOW IF ALL OF
19 THESE WERE THE ONES.

20 MS. SISKIND: BUT THIS IS MY COPY OF THE EXHIBITS.

21 MR. SCHAINBAUM: WELL, I DON'T KNOW.

22 MS. SISKIND: I HAVE WRITTEN ALL OVER IT, BUT THERE
23 WAS A CHANGE MADE TO 139-1, A DIGIT WAS WRONG.

24 THE COURT: DO YOU NEED A FEW MINUTES TO SECURE YOUR
25 COPIES? WE SHOULD GET STARTED.

1 MR. SCHAINBAUM: ONE OTHER THING, IF YOU ALLOW THIS,
2 I WANT TO HAVE WIDE LATITUDE ON CROSS-EXAMINATION.

3 THE COURT: I'M NOT SURE I KNOW WHAT THAT MEANS.

4 MR. SCHAINBAUM: I DON'T KNOW EITHER BY "LATITUDE."

5 THE COURT: WELL, SEARCH FOR THE DEFINITION WHEN THE
6 TIME COMES THEN.

7 MR. SCHAINBAUM: WELL, I'LL BE LOOKING FOR THE
8 TRUTH.

9 MS. SISKIND: AND, YOUR HONOR, THIS IS NOT GOING
10 INTO EVIDENCE.

11 THE COURT: I UNDERSTAND.

12 MR. SCHAINBAUM: I STILL OBJECT BECAUSE IT'S
13 EMPHASIZING AND REHASHING AND REEMPHASIZING AND ACTUALLY
14 PRODDING THE JURY IN AN UNFAIR PREJUDICIAL MANNER.

15 THE COURT: I THINK YOU, AS YOU SAID, CLOSING
16 ARGUMENT. THAT MIGHT BE PART OF YOUR ARGUMENT TO EMPHASIZE --

17 MR. SCHAINBAUM: I NEED ANOTHER TWO MINUTES TO WRITE
18 THAT NOTE DOWN FOR MY CLOSING ARGUMENT.

19 THE COURT: SO WE'LL GIVE MR. ALLEN A CHANCE. DO
20 YOU HAVE AN EXTRA CLEAN COPY OF THIS?

21 MS. SISKIND: NO. WE PROVIDED TWO COPIES TO THE
22 COURT AND ONE COPY TO THE DEFENSE.

23 THE COURT: I'LL SEE IF I HAVE A COPY AND YOU CAN
24 BORROW MINE IF HE DOES NOT HAVE ONE.

25 MS. SISKIND: I THINK YOU HAVE THE WRONG VERSION OF

139-1.

MR. SCHAINBAUM: WE HAVE THE WRONG ONE.

THE COURT: I'LL GIVE YOU MY COPIES.

MS. SISKIND: AND THAT'S GOING TO BE OF 2 AND NOT 5.

MR. SCHAINBAUM: AND THAT'S THE DANGER, TOO, OF
INACCURACY.

MR. KENNEDY: WE PROVIDED ALL OF THE UPDATED COPIES.

THE COURT: I'M GOING TO LOOK IN MY COPIES AND SEE
IF I HAVE THE CLEAN COPIES. I'LL HAND THEM DOWN TO COUNSEL,
AND YOU CAN REFER TO THE CLEAN COPIES.

MS. SISKIND: ALL RIGHT.

THE COURT: THANK YOU VERY MUCH.

(END OF DISCUSSION AT SIDE-BAR.)

THE COURT: THANK YOU, COUNSEL.

MS. SISKIND: THIS IS THE CORRECT VERSION.

THE COURT: MR. SCHAINBAUM, I THINK YOU HAVE THE
CORRECT VERSION OF THESE DOCUMENTS.

MR. SCHAINBAUM: WE HAVE JUST BEEN HANDED THEM BY
GOVERNMENT COUNSEL.

THE COURT: AND SHE RECEIVED THEM FROM ME.

MR. SCHAINBAUM: THANK YOU, YOUR HONOR.

THE COURT: AND THEY'RE FROM MY BINDER, AND I
BELIEVE THEY'RE THE MOST CURRENT VERSION.

MR. SCHAINBAUM: ALL RIGHT.

THE COURT: SO, COUNSEL, YOU CAN CONTINUE AND YOU

DIRECT OERTEL
1 MAY USE THESE EXHIBITS FOR DEMONSTRATIVE PURPOSES ONLY.

2 MR. SCHAINBAUM: AND YOU NOTED MY OBJECTION.

3 THE COURT: I DID NOTE YOUR OBJECTION.

4 MR. SCHAINBAUM: OKAY.

5 THE COURT: AND THEY'RE BEING USED NOTING YOUR
6 OBJECTION AND OVER YOUR OBJECTION. THANK YOU.

7 MR. SCHAINBAUM: AS WELL AS FOR THE OTHER SUMMARY
8 THAT WAS JUST UTILIZED 140.

9 THE COURT: YES, THAT OBJECTION WAS ALSO MADE.

10 MR. SCHAINBAUM: THANK YOU, YOUR HONOR.

11 THE COURT: YOU'RE WELCOME.

12 BY MS. SISKIND:

13 Q. MR. OERTEL, WHEN YOU WERE PREPARING THE SUMMARIES -- LET
14 ME ASK YOU THIS, WHEN YOU WERE GOING THROUGH THE EXHIBITS THAT
15 WERE INTRODUCED AT TRIAL, DID SOME OF THOSE EXHIBITS HAVE
16 AMOUNTS EXPRESSED IN FOREIGN CURRENCIES?

17 A. YEAH.

18 Q. AND IN ORDER TO PREPARE FOR YOUR TESTIMONY TODAY, DID YOU
19 TAKE THOSE FOREIGN CURRENCIES AND CONVERT THEM INTO U.S.
20 DOLLARS?

21 A. YES.

22 Q. HOW DID YOU DO THAT?

23 A. I WENT TO AN ONLINE SITE. IT'S CALLED OANDA.COM. IT'S
24 GOT A REALLY EASY VERSION OF CONVERTING DIFFERENT FORMS OF
25 CURRENCIES INTO U.S. DOLLARS.

Q. AND HOW DO YOU USE IT?

A. YOU PLUG IN WHATEVER FOREIGN CURRENCY YOU HAVE, YOU PUT IN THE DATE THAT YOU WANT, AND THEN IT GIVES YOU THE EXCHANGE RATE.

Q. AND COULD YOU DO IT AS OF TODAY'S DATE, FOR EXAMPLE?

A. SURE.

Q. COULD YOU PICK ANY DATE IN HISTORY TO DO IT FOR?

A. SURE. I COULD DO IT FOR MY BIRTHDAY.

Q. SO -- AND THIS WAS THE SAME WEBSITE THAT YOU USED IN YOUR INTEREST INCOME CALCULATIONS; CORRECT?

A. YEAH, THAT'S RIGHT. I USED THE SAME -- THAT SAME SITE FOR ALL OF THE CONVERSIONS. I WANTED TO BE CONSISTENT.

Q. CAN YOU TURN FOR A MOMENT TO WHAT HAS BEEN MARKED AS GOVERNMENT'S EXHIBIT 138.

A. OKAY.

Q. WHAT IS THE TITLE OF 138?

A. CURRENCY CONVERSIONS.

Q. AND IS THIS THE RESULT OF YOU PLUGGING IN THOSE NUMBERS ON THAT WEBSITE FOR VARIOUS EXHIBITS?

A. YES.

Q. DOES EXHIBIT 138 FAIRLY AND ACCURATELY SUMMARIZE YOUR CURRENCY CONVERSIONS?

A. YES.

MS. SISKIND: YOUR HONOR, THE GOVERNMENT SEEKS TO USE EXHIBIT 138 FOR DEMONSTRATIVE PURPOSES.

MR. SCHAINBAUM: SAME OBJECTION, YOUR HONOR.

THE COURT: NOTED AND IT WILL BE PERMITTED TO BE
USED FOR DEMONSTRATIVE PURPOSES ONLY.

MS. SISKIND: MS. LANE, IF WE COULD DISPLAY 138.

Q. IS THIS YOUR CHART OF CURRENCY CONVERSIONS?

A. YES.

Q. AND THE EXHIBITS LISTED IN THE LEFT-HAND COLUMN, ARE THOSE
ONES THAT CONTAIN AMOUNTS EXPRESSED IN FOREIGN CURRENCIES?

A. RIGHT.

Q. AND WILL YOU -- WHEN WE GO THROUGH THE VARIOUS EXHIBITS IN
YOUR CHARTS 139-1 THROUGH 139-5 WILL YOU BE REFERRING BACK TO
THIS IN ORDER TO TELL THE JURY WHAT VARIOUS AMOUNTS ARE IN U.S.
DOLLARS?

A. SURE.

Q. SO I WANT TO START WITH EXHIBIT 139-1. IF YOU COULD WAIT
TO DISPLAY THAT FOR A MOMENT.

YOUR HONOR, I WANT TO VERIFY THAT ALL OF MY EXHIBITS HAVE
BEEN ADMITTED.

THE COURT: SURE. THANK YOU.

(PAUSE IN PROCEEDINGS.)

MS. SISKIND: IF YOU COULD DISPLAY EXHIBIT 139-1,
PLEASE. I HAVE VERIFIED THAT ALL OF THE EXHIBITS ARE ADMITTED
INTO EVIDENCE.

THE COURT: THANK YOU.

BY MS. SISKIND:

Q. WHAT IS THE TITLE OF THIS CHART?

A. SUMMARY OF ACCOUNT ACTIVITY ASHVIN DESAI HSBC INDIA
ACCOUNT 0043679.

Q. AND DO ALL OF THE EXHIBITS IN THE LEFT-HAND COLUMN --
WELL, FIRST OF ALL, WERE ALL OF THE EXHIBITS ADMITTED AT TRIAL?

A. I BELIEVE SO.

Q. AND DO THEY ALL RELATE TO ACCOUNT 3679?

A. YEAH.

MS. SISKIND: YOUR HONOR, MAY I USE A BLOWUP OF THIS
TO DISPLAY TO THE JURY?

THE COURT: HAVE YOU SEEN THE BLOWUP?

MR. SCHAINBAUM: NO.

THE COURT: IF YOU COULD SHOW MR. SCHAINBAUM THE
BLOWUP, PLEASE.

MR. SCHAINBAUM: SAME OBJECTION, YOUR HONOR. THE
EXHIBITS REFERENCED IN THE BLOWUP IS THE DIRECT EVIDENCE FOR
THE JURY TO DETERMINE FROM LOOKING AT THE EVIDENCE.

THE COURT: I UNDERSTAND.

MR. SCHAINBAUM: AND THIS IS JUST THE GOVERNMENT'S
INTERPRETATION OF WHAT EACH EXHIBIT STATES UNDER THE, QUOTE,
HEADING SUMMARY.

THE COURT: MR. SCHAINBAUM, YOU'LL HAVE AN
OPPORTUNITY AT CROSS-EXAMINATION TO PRESENT THAT POINT TO THIS
WITNESS AND TO OUR JURY, BUT I NOTE YOUR OBJECTION. AND I'LL
ALLOW THE GOVERNMENT TO USE THIS OVER YOUR OBJECTION.

DIRECT OERTEL

1 CAN THE WITNESS SEE THE CHART FROM THERE?

2 MS. SISKIND: HE HAS IT.

3 THE WITNESS: I HAVE IT IN MY BINDER.

4 THE COURT: OH, IT'S THE SAME CHART.

5 THE WITNESS: THANK YOU, YOUR HONOR.

6 THE COURT: MR. SCHAINBAUM, CAN YOU SEE THE CHART?

7 MR. SCHAINBAUM: I CAN SEE IT, AND I KNOW WHAT I
8 SAID THE OTHER DAY, IT'S A DISTORTION.

9 THE COURT: I UNDERSTAND YOUR OPINION OF THE CHART.
10 I'M JUST CURIOUS WHETHER YOU CAN SEE THE CHART.

11 MR. SCHAINBAUM: I SEE THE CHART.

12 THE COURT: THANK YOU.

13 BY MS. SISKIND:

14 Q. MR. OERTEL, WHAT IS THE FIRST EXHIBIT REFERENCED ON 139-1?

15 A. 28.

16 MS. SISKIND: AND, MS. LANE, IF WE CAN HAVE 28 ON
17 THE SCREEN?

18 Q. AND IF YOU CAN FLIP TO 28 IN YOUR BINDER. IT SHOULD BE IN
19 THE FIRST VOLUME PROBABLY.

20 A. SURE.

21 MS. SISKIND: MS. LANE, IF YOU WOULD GO TO THE
22 SECOND PAGE. I'M SORRY, THE LETTER IS IN THERE. YOU MIGHT GET
23 THE THIRD PAGE.

24 THE WITNESS: I HAVE 28.

25 BY MS. SISKIND:

Q. WELL, FIRST LOOKING AT THE REFERENCE TO 139-1, WHAT IS THE DATE OF THE TRANSACTION IN EXHIBIT 28?

A. 7-17-06.

Q. JULY 17TH, 2006?

A. YES.

Q. AND WHAT TYPE OF TRANSACTION WAS OCCURRING IN EXHIBIT 28?

A. WELL, THE SUBJECT IS REACTIVATION --

Q. I'M ASKING YOU TO LOOKING AT EXHIBIT 139-1 AND LOOK AT THE COLUMN FOR TYPE OF TRANSACTION.

A. OH, I'M SORRY. REACTIVATION OF DORMANT ACCOUNT. PLACEMENT OF NEW DEPOSITS.

Q. AND LOOKING AT THE THIRD PAGE OF EXHIBIT 28, DO YOU SEE A LETTER?

A. YES.

Q. AND ARE THERE REFERENCES TO THREE DIFFERENT DEPOSITS?

A. YES.

Q. IN WHAT CURRENCY ARE THOSE DEPOSITS EXPRESSED?

A. IT SAYS INR, WHICH, AGAIN, MEANS INDIA RUPEES.

Q. AND DID YOU CONVERT THOSE AMOUNTS TO U.S. DOLLARS?

A. I THINK SO, YEAH.

Q. AND WOULD ANYTHING REFRESH YOUR RECOLLECTION IF YOU DID THAT?

A. YES. YES, THE CURRENCY CONVERSION.

Q. ALL RIGHT. SO IF YOU TURN TO 138.

A. OKAY.

Q. DID YOU CONVERT THESE AMOUNTS TO U.S. DOLLARS?

A. YES, I DID.

Q. WHAT WAS THE VALUE OF 2.5 RUPEES ON JULY 17TH, 2006?

A. \$54,025.

Q. WHAT WAS THE VALUE OF 1 MILLION RUPEES FOR THE SECOND DEPOSIT ON JULY 17TH, 2006?

A. \$21,610.

Q. AND WHAT WAS THE VALUE OF 636,674.28 RUPEES ON JULY 17TH, 2006?

A. \$13,758.53.

Q. NOW, IF YOU GO TO LOOK BACK AT 139-1, WHAT TYPE OF TRANSACTION WAS INCLUDED IN GOVERNMENT'S EXHIBIT 29?

A. IT IS TRANSFER OF FUNDS FROM HSBC PRIVATE BANK LIMITED U.K.

MS. SISKIND: MS. LANE, IF YOU COULD DISPLAY THE SECOND PAGE OF EXHIBIT 29.

Q. DO YOU SEE AMOUNTS ON THIS PAGE -- ON THIS LETTER EXPRESSED IN FOREIGN CURRENCIES?

A. YES, I SEE THEM IN EUROS, GBP. GBP STANDS FOR GREAT BRITAIN POUNDS.

Q. SO IN THAT FIRST PARAGRAPH OF THE LETTER WHERE IT SAYS WIRE TRANSFER, EUROS 523,261.97, DID YOU CALCULATE WHAT THE VALUE OF THAT WAS ON THE DATE OF THIS LETTER, JULY 20TH, 2006?

A. YES.

Q. AND WHAT WAS THE VALUE OF THAT AMOUNT OF EUROS ON THAT

DIRECT CREDIT
DATE?

A. LET'S SEE. THAT'S 654 -- EXCUSE ME. \$867.59.

Q. AND DO YOU SEE IN THE SECOND PARAGRAPH OF THE LETTER IN EXHIBIT 29 WHERE IT INSTRUCTS WIRE TRANSFER GBP 832,913?

A. YES.

Q. AND WHAT WAS THE VALUE OF THAT AMOUNT BEING WIRE TRANSFERRED ON JULY 20TH, 2006?

A. IN UNITED STATES DOLLARS IT'S \$1,523,855.98.

Q. AND IF WE GO BACK TO THE 139-1, WHAT IS THE NEXT EXHIBIT THAT IS LISTED IN THIS CHART?

A. IT IS EXHIBIT 30. THAT'S A REQUEST FOR INTERNET BANKING ACCESS.

Q. AND HOW ABOUT EXHIBIT 139, WHAT WAS THE DATE OF THAT EXHIBIT?

A. THAT'S FEBRUARY 1ST, 2007.

Q. AND WHAT TYPE OF TRANSACTION DOES IT RELATE TO?

A. DEPOSITING CHECKS FROM BANK OF AMERICA AND CITIBANK. THEY TOTAL \$325,000.

Q. AND LET'S SKIP DOWN TO EXHIBIT 63, WAS THIS ANOTHER EXHIBIT THAT CONTAINED AN AMOUNT EXPRESSED IN A FOREIGN CURRENCY?

A. YES. THAT ONE WAS IN RUPEES AGAIN.

MS. SISKIND: MS. LANE, IF YOU COULD GO TO THE SECOND PAGE OF EXHIBIT 63.

Q. DO YOU SEE AN AMOUNT EXPRESSED ON HERE OF 20,000 RUPEES?

DIRECT CERTEL

1 A. YES.

2 Q. AND DO YOU HAVE THAT IN YOUR BINDER IN FRONT OF YOU AS
3 WELL, IF YOU WANT TO LOOK AT IT?

4 A. SURE. OKAY.

5 Q. AND CAN YOU JUST READ AFTER "DEAR SIR" WHAT IT SAYS IN THE
6 LETTER?

7 A. "PLEASE ISSUE PAY ORDER AS FOLLOWS: DEBIT ACCOUNT FROM
8 NRE SAVINGS THE AMOUNT IS 20,000 RUPEES; THE BENEFICIARY NAME
9 IS -- LET ME SPELL IT. IT'S H, I BELIEVE IT'S E-E-N-A,
10 P-U-R-O-H-I-T PAYABLE AT BOMBAY.

11 Q. AND WHAT IS THE DATE OF THIS LETTER?

12 A. FEBRUARY 5TH, 2008.

13 Q. AND DID YOU CALCULATE WHAT THE VALUE IN U.S. DOLLARS OF
14 20,000 RUPEES WAS ON FEBRUARY 5TH, 2008?

15 A. YES.

16 Q. AND WHAT WAS IT?

17 A. \$507.04.

18 Q. GOING A LITTLE FARTHER DOWN, EXHIBIT 139-1. DO YOU SEE A
19 REFERENCE TO EXHIBIT 97?

20 A. YES.

21 Q. AND IS THIS ANOTHER EXHIBIT THAT CONTAINS SOME AMOUNTS
22 EXPRESSED IN A FOREIGN CURRENCY?

23 A. YES. IT'S THE CONVERSION OF 4,800,000 RUPEES INTO A
24 DEPOSIT INTO --

25 Q. IS IT 4,800,000 --

A. I'M SORRY. 4,800,000.

Q. OR IS IT 48 MILLION?

A. IT'S -- I'M SORRY, THE COMMAS.

Q. IS THAT BECAUSE COMMAS ARE PLACED DIFFERENTLY WITH INDIA CURRENCY THAN U.S. CURRENCY?

A. YEAH, THAT'S WHAT GETS ME. IT'S SIX ZEROS WITH 48. SO IT'S 48 MILLION.

Q. 48 MILLION RUPEES?

A. YES.

Q. AND DID YOU CALCULATE WHAT THE VALUE OF 48 MILLION RUPEES WAS ON MAY 22ND, 2009?

A. YES, I DID.

Q. AND WHAT IS IT?

A. IT'S \$1,700,870.

Q. AND WHAT IS THE LAST TRANSACTION LISTED ON THIS CHART?

A. IT'S EXHIBIT 101, SEPTEMBER 29, 2009, AND IT'S A REQUEST TO ISSUE A DEBIT CARD.

Q. AND IF YOU COULD TURN TO 139-2, PLEASE.

A. OKAY.

MS. SISKIND: ANY OBJECTION TO IT BEING DISPLAYED TO THE JURY?

THE COURT: MR. SCHAINBAUM?

MR. SCHAINBAUM: SAME OBJECTION. IT'S A GREAT DISTORTION. IT'S FOR THE JURY TO DETERMINE FROM THE EVIDENCE ITSELF.

1 THE COURT: ALL RIGHT. YES. AND THAT OBJECTION
2 APPLIES, I BELIEVE, WITH ALL OF THE 139 CHARTS; IS THAT
3 CORRECT?

4 MR. SCHAINBAUM: CORRECT, AND ALSO WITH 140.

5 THE COURT: YES.

6 MS. SISKIND: MAY I DISPLAY IT, YOUR HONOR?

7 THE COURT: YES, IT MAY BE DISPLAYED OVERRULING THE
8 OBJECTION -- NOTING THE OBJECTION.

9 BY MS. SISKIND:

10 Q. WHAT IS THE TITLE OF 139-2?

11 A. IT IS SUMMARY OF ACCOUNT ACTIVITY NILA DESAI HSBC INDIA
12 ACCOUNT 0046895.

13 Q. AND WHAT IS THE FIRST EXHIBIT REFERENCED ON HERE?

14 A. 31.

15 Q. AND WHAT WAS THE DATE OF THE TRANSACTION AT ISSUE IN
16 EXHIBIT 31?

17 A. OCTOBER 17TH, 2006.

18 Q. AND WHAT WAS THE NATURE OF THAT TRANSACTION?

19 A. IT IS THE TRANSFER OF \$1 MILLION FROM HSBC PRIVATE BANK
20 LIMITED U.K.

21 Q. AND EXHIBIT 41, WHAT WAS THE DATE OF THAT EXHIBIT?

22 A. APRIL 18TH, 2007.

23 Q. AND WHAT WAS THE NATURE OF THE TRANSACTION IN THERE?

24 A. THAT IS THE TRANSFER OF \$786,822.62 FROM HSBC INDIA
25 ACCOUNT 0043679.

Q. AND WHOSE HSBC ACCOUNT ACCORDING TO THE EVIDENCE WAS
0043679?

A. THAT'S MR. DESAI'S.

Q. AND DOES EXHIBIT 86 SHOW ANOTHER TRANSFER FROM HIS ACCOUNT
TO HIS WIFE'S ACCOUNT?

A. YES.

Q. AND IS THAT -- WHAT IS THE AMOUNT OF THAT TRANSFER?

A. THAT IS 250,000 RUPEES.

Q. AND DID YOU CALCULATE WHAT THE VALUE OF 250,000 RUPEES WAS
ON FEBRUARY 3RD, 2009?

A. YES.

Q. AND WHAT WAS IT?

A. IT'S \$5,041.86.

Q. IF YOU COULD GO TO EXHIBIT 139-3.

YOUR HONOR, MAY I DISPLAY THE BLOWUP OF 139-3?

THE COURT: YES, NOTING MR. SCHAINBAUM'S OBJECTION.

MR. SCHAINBAUM: WELL, I HAVE NOT EVEN SEEN THE
CHART, YOUR HONOR.

MS. SISKIND: THEY'RE ALL BLOWUPS OF THE -- I'LL
SHOW THEM TO HIM.

THE COURT: THESE ARE REPRESENTATIVE CHARTS THAT ARE
BLOWUPS OF THE EXHIBITS.

MR. SCHAINBAUM: WELL, THE SAME OBJECTION.

THE COURT: OF COURSE.

MR. SCHAINBAUM: THE EVIDENCE SPEAKS FOR ITSELF, AND

IT'S FOR THE JURY TO DETERMINE FROM THE EVIDENCE.

MS. SISKIND: YOUR HONOR, CAN WE HAVE A SIDE-BAR,
PLEASE.

THE COURT: AND THOSE OBJECTIONS, MR. SCHAINBAUM,
WILL BE NOTED AS TO EACH OF THESE, AND I BELIEVE THEY'RE A
COLLECTIVE OBJECTION SO I DON'T NEED THE SPEAKING OBJECTION
EACH TIME. THEY'RE NOTED.

MR. SCHAINBAUM: ALL RIGHT. THANK YOU, YOUR HONOR.

MS. SISKIND: THANK YOU, YOUR HONOR.

THE COURT: YOU'RE WELCOME.

BY MS. SISKIND:

Q. WHAT IS THE TITLE OF 139-3?

A. SUMMARY OF ACCOUNT ACTIVITY AMI DESAI HSBC INDIA ACCOUNT
0045163.

Q. AND WHAT TWO EXHIBITS ARE LISTED IN THIS CHART?

A. 66 AND 69.

Q. ARE THOSE THE TWO SETS OF DEPOSIT RECORDS THAT YOU LOOKED
AT THIS MORNING?

A. THAT'S RIGHT, THE ONE FOR 250,000 AND THE ONE FOR A LITTLE
OVER 208,000.

Q. IF WE CAN TURN TO EXHIBIT 66 AND LOOK AT THE SECOND PAGE?

A. OKAY.

Q. DO THE SECOND, THIRD, AND FOURTH PAGES OF EXHIBIT 66 SHOW
THE CHECKS THAT MAKE UP THE DEPOSITS ON THAT DATE?

A. YES, THERE ARE THREE CHECKS.

Q. AND ON PAGE 2 OF THE EXHIBIT WHO IS THIS CHECK PAID TO THE ORDER OF?

A. ASHVIN DESAI.

Q. ON THE NEXT PAGE WHO IS THAT CHECK PAID TO THE ORDER OF?

A. PAID TO THE ORDER OF ASHVIN DESAI.

Q. AND THE THIRD CHECK?

A. PAID TO THE ORDER OF ASHVIN DESAI.

Q. AND IF YOU GO TO EXHIBIT 69, ARE BOTH CHECKS -- DO BOTH CHECKS IN THAT EXHIBIT CONTAIN THE NAME ASHVIN DESAI ON THEM?

A. ASHVIN, YEAH.

Q. AND IF YOU COULD GO TO 139-4.

MR. SCHAINBAUM: CAN WE HAVE A SIDE-BAR?

THE COURT: YES.

(SIDE-BAR CONFERENCE ON THE RECORD.)

THE COURT: WE'RE AT SIDE-BAR.

MR. SCHAINBAUM: THIS PARTICULAR CHART IS MISLEADING BECAUSE IT SHOWS -- AARTI KUMAR'S TESTIMONY WAS THAT THERE WERE ONLY TWO ACCOUNTS, ONE WITH ASHVIN DESAI AND NILA DESAI, AND NEAL DESAI, AND HIS DAUGHTER, AND THIS SUGGESTS AN INDEPENDENT ACCOUNT WHICH IS NOT REALLY AN INDEPENDENT ACCOUNT, IT'S A SUBACCOUNT.

MS. SISKIND: IF YOUR HONOR LOOKS AT ONE OF THE SPREADSHEETS THERE ARE FOUR LISTED ON THERE: ONE THAT IS IDENTIFIED AS ASHVIN AND NEAL; AND ONE THAT IS IDENTIFIED AS NILA AND AMI; AND ONE THAT IS IDENTIFIED AS JUST NEAL; AND ONE

1 THAT IS IDENTIFIED JUST AS AMI. AND THERE ARE FOUR SEPARATE
2 ACCOUNT NUMBERS. SO THERE'S EVIDENCE OF FOUR SEPARATE
3 ACCOUNTS, TWO THAT WERE JOINT AND TWO THAT WERE HELD WITH EACH
4 OF THE CHILDREN.

5 MR. SCHAINBAUM: BUT THE TESTIMONY OF AARTI KUMAR
6 WAS THAT THERE WERE ONLY TWO ACCOUNTS AND THESE OTHER ACCOUNTS
7 ARE SUBACCOUNTS OF ASHVIN DESAI. JUST PUT UP EVIDENCE WHERE
8 ALL OF THE CHECKS SAY ASHVIN DESAI, ASHVIN DESAI.

9 MS. SISKIND: AND ALSO I WOULD NOTE ON EXHIBIT 66
10 AND 69 THE MONIES BEING DEPOSITED, THERE'S ACCOUNT NUMBER
11 REFERENCES FOR AMI AND NEAL THAT ARE DIFFERENT FROM
12 MR. DESAI'S, WHICH IS 3679. THERE ARE FOUR DIFFERENT ACCOUNT
13 NUMBERS THAT ARE IN EVIDENCE, AND THERE IS SUFFICIENT EVIDENCE
14 THAT THERE ARE DIFFERENT NAMES ASSOCIATED WITH EACH ACCOUNT.

15 MR. SCHAINBAUM: THEY'RE SUBACCOUNTS.

16 THE COURT: MY RECOLLECTION IS THAT THERE WERE
17 FOUR -- EVIDENCE OF FOUR SEPARATE ACCOUNTS. NOW, THEY MAY BE
18 SUBACCOUNTS OR SUBJECT TO OTHER SCRUTINY, BUT I'M GOING TO
19 ALLOW THE CHART TO COME IN.

20 MR. SCHAINBAUM: NOT TO COME IN.

21 THE COURT: NO, NO, TO BE USED BY THIS WITNESS AS A
22 SUMMARY.

23 MR. SCHAINBAUM: OVER MY OBJECTION.

24 THE COURT: OF COURSE. AND I BELIEVE THAT YOU WILL
25 HAVE THE SAME OBJECTION AS TO EACH OF THESE CHARTS. YOU HAVE

DIRECT CERTEL

1 ALREADY EXPRESSED THAT I BELIEVE.

2 MR. SCHAINBAUM: CORRECT.

3 THE COURT: SO I'LL NOTE THOSE OBJECTIONS. WE DON'T
4 NEED A SPEAKING OBJECTION EACH TIME.

5 MR. SCHAINBAUM: IF YOU WOULD DO THAT KINDLY, I
6 WON'T HAVE TO DO IT, BUT OTHERWISE I WANT TO PROTECT THE RECORD
7 HERE BY MAKING SURE BECAUSE THE GOVERNMENT PROSECUTOR WILL SAY
8 MAYBE AT SOME TIME, WELL, MR. SCHAINBAUM FAILED TO OBJECT
9 TIMELY.

10 MS. SISKIND: I DON'T THINK I WOULD BE ABLE TO SAY
11 THAT.

12 THE COURT: I DON'T THINK SHE COULD CREDIBLY MAKE
13 THAT REMARK.

14 MR. SCHAINBAUM: I'M NOT GOING TO ANSWER THAT.

15 THE COURT: YOU'VE BEEN DOING -- YOU'VE BEEN
16 OBJECTING AND MAKING YOUR OBJECTIONS NOTED, AND I HAVE BEEN
17 DOING MY BEST TO NOTE YOUR OBJECTIONS FOR THE RECORD TO MAKE A
18 RECORD.

19 MR. SCHAINBAUM: YES, I HAVE. THAT'S THE ONLY
20 REASON I HAVE BEEN UP HERE IS BECAUSE I GET WORRIED AND I DON'T
21 HEAR ANYTHING, SO I JUST JUMP UP AND MAKE THE OBJECTION. AND
22 YOU CAN TELL ME ON THE RECORD THAT IT'S A CONTINUING --

23 THE COURT: I THINK I TRIED TO DO THAT LAST TIME,
24 AND I'LL DO THAT AGAIN.

25 MR. SCHAINBAUM: YES.

1 THE COURT: I'LL NOTE EVERY TIME ONE OF THESE CHARTS
2 IS INTRODUCED.

3 MR. SCHAINBAUM: NOT INTRODUCED, DISPLAYED.

4 THE COURT: THANK YOU. DISPLAYED. IT'S NOT COMING
5 INTO EVIDENCE. THANK YOU. I'M CORRECTED.

6 MR. SCHAINBAUM: YEAH. BECAUSE IT'S PREJUDICIAL
7 ENOUGH, BUT IF IT COMES INTO EVIDENCE --

8 THE COURT: THEY'RE NOT BEING SOUGHT TO BE ADMITTED.
9 THEY'RE NOT GOING TO BE MOVED INTO EVIDENCE.

10 MR. SCHAINBAUM: OKAY.

11 THE COURT: THEY'RE ONLY BEING DISPLAYED FOR THIS
12 WITNESS AS USED AS A SUMMARY WITNESS.

13 MR. SCHAINBAUM: OVER MY OBJECTION, DULY NOTED
14 CONTINUING.

15 THE COURT: YES.

16 MS. SISKIND: YOUR HONOR, WE OBJECT. WHENEVER THE
17 DEFENSE MAKES AN OBJECTION, PARTICULARLY BECAUSE THE GROUNDS
18 ARE CLEAR AT THIS POINT, IT'S NOT AN APPROPRIATE TIME FOR THEM
19 TO MAKE THEIR CLOSING ARGUMENT OVER AND OVER AGAIN TO THE JURY.

20 THE COURT: I'VE GIVEN SOME LATITUDE ABOUT THAT. I
21 DON'T APPRECIATE, AND I DON'T THINK THE JURY APPRECIATES,
22 SPEAKING OBJECTIONS. THEY'RE NOT HELPFUL.

23 THE SPEAKING OBJECTIONS ARE SUPPOSED TO HELP THE JUDGE
24 WITH THE EVIDENCE, BUT I THINK WE'RE ALL EXPERIENCED IN TRIAL
25 COURTS AND SOME OF THAT INFORMATION AND SPEAKING OBJECTIONS CAN

1 LEAVE THE JURY WITH A DIFFERENT MIND. THAT'S NOT THE PURPOSE
2 OF OBJECTIONS. THEY'RE LEGAL OBJECTIONS ONLY.

3 AND I'M NOT SUGGESTING ANYTHING UNTOWARD, MR. SCHAINBAUM,
4 IT'S JUST I HAVE NOT EXPRESSED MY POLICY, PERHAPS, ABOUT
5 SPEAKING OBJECTIONS.

6 I'VE ALLOWED YOU GREAT LATITUDE, I BELIEVE, IN MAKING YOUR
7 OBJECTIONS AND MAKING THE RECORD.

8 MR. SCHAINBAUM: THAT'S THE PRIMARY PURPOSE.

9 THE COURT: UNDERSTOOD, AND WE CAN MAKE THAT RECORD
10 BY ME NOTING YOUR OBJECTIONS.

11 MR. SCHAINBAUM: THAT'S CORRECT.

12 THE COURT: AND THE SIDE-BAR CONVERSATION IS PART OF
13 THE RECORD, AND I THINK THAT THIS SUFFICIENTLY ESTABLISHED FOR
14 THE RECORD YOUR POSITION ON THAT.

15 MR. SCHAINBAUM: OKAY. THANK YOU.

16 THE COURT: THANK YOU.

17 (END OF DISCUSSION AT SIDE-BAR.)

18 BY MS. SISKIND:

19 Q. WHAT IS THE TITLE, MR. OERTEL, OF 139-4?

20 A. IT IS SUMMARY OF ACCOUNT ACTIVITY NEAL DESAI HSBC INDIA
21 ACCOUNT 0049689.

22 Q. AND THE FIRST TWO EXHIBITS REFERENCED ON HERE, ARE THOSE
23 THE ONES WE TALKED ABOUT 66 AND 69?

24 A. RIGHT, WITH THE DEPOSITS.

25 Q. AND WHAT IS THE TYPE OF TRANSACTION SET FORTH IN

EXHIBIT 75?

A. THAT'S A TRANSFER.

Q. AND OF HOW MUCH MONEY?

A. A TRANSFER OF \$185,000 FROM HSBC INDIA ACCOUNT 0043679.

Q. AND THAT'S A TRANSFER FROM MR. DESAI -- FROM ASHVIN
DESAI'S HSBC ACCOUNT TO HIS SON'S ACCOUNT?

A. THAT'S RIGHT, BECAUSE IT'S 3679 AND THAT'S MR. DESAI'S.

Q. AND WHAT WAS THE DATE OF THAT TRANSFER?

A. THAT IS JUNE 16TH, 2008.

Q. AND WHAT KIND OF TRANSACTION WAS SET FORTH IN EXHIBIT 132?

A. THAT IS A TRANSFER OF FUNDS TO HSBC INDIA ACCOUNT 0043679.

MS. SISKIND: IF WE CAN HAVE 139-5.

MR. SCHAINBAUM: SAME OBJECTION.

THE COURT: NOTED, AND IT WILL BE PERMITTED TO BE
DISPLAYED TO THE JURY FOR SUMMARY PURPOSES OVER YOUR OBJECTION
AS NOTED.

MR. SCHAINBAUM: THANK YOU, YOUR HONOR.

THE COURT: YOU'RE WELCOME.

BY MS. SISKIND:

Q. WHAT IS 139-5?

A. THAT IS THE SUMMARY OF ACCOUNT ACTIVITY AMI DESAI HSBC
DUBAI ACCOUNT 0215624.

Q. AND WHAT TYPE OF TRANSACTION WAS SET FORTH IN EXHIBIT 90?

A. THAT'S AN E-MAIL REGARDING OPENING BANK ACCOUNT FOR AMI
DESAI IN DUBAI.

Q. AND IF YOU LOOK BACK AT EXHIBIT 90, IF WE CAN HAVE EXHIBIT 90?

A. OKAY.

Q. WHAT NAME AND E-MAIL ADDRESS IS THAT E-MAIL FROM?

A. IT SAYS FROM ASHVIN DESAI, ASHVIN@PROSURG.COM.

Q. AND WHAT WAS THE DATE OF THAT E-MAIL?

A. FEBRUARY 9, 2009.

Q. AND IF YOU LOOK BACK AT 139-5, WHAT TYPE OF TRANSACTION WAS CONTAINED IN EXHIBITS 93 AND 94?

A. THAT'S THE TRANSFER OF 105,408.24 BRITISH POUNDS FROM THE HSBC INDIA ACCOUNT 0043679.

Q. AND SO THAT'S A TRANSFER FROM MR. DESAI'S ACCOUNT TO HIS DAUGHTER'S ACCOUNT IN DUBAI?

A. YES. IT'S FROM 3679 TO HSBC DUBAI.

Q. AND DID YOU CALCULATE WHAT THE VALUE OF 105,408.24 POUNDS WAS ON FEBRUARY 11TH, 2009?

I'M SORRY. DID YOU CALCULATE IT AS A DIFFERENT DATE? YOU KNOW, I'LL STRIKE THAT QUESTION.

A. OKAY.

Q. WHAT WAS THE LAST TRANSACTION SET FORTH IN EXHIBIT 139-5?

A. 105.

Q. AND WHAT WAS THE NATURE OF THE TRANSACTION IN THAT EXHIBIT?

A. THAT'S AN E-MAIL REQUESTING HSBC DUBAI MAIL STATEMENTS TO THE REPRESENTATIVE OFFICE.

Q. I WANT TO TAKE YOU TO, IF YOU TAKE A LOOK AT EXHIBIT 94?

A. OKAY.

Q. AND DO YOU SEE THE REFERENCE TO THAT AMOUNT OF GREAT
BRITISH POUNDS IN THERE?

A. YES, I DO.

Q. AND WHAT IS THE DATE OF THE E-MAIL THAT CONTAINS THE
REFERENCE TO THAT AMOUNT?

A. YEAH. IT'S SENT ON THURSDAY, MARCH 19TH, 2009.

Q. AND DID YOU CALCULATE WHAT THE VALUE OF THAT AMOUNT OF
BRITISH POUNDS WAS ON MARCH 19TH, 2009?

A. YES.

Q. AND WHAT WAS IT?

A. IN U.S. DOLLARS IT'S 4 -- EXCUSE ME -- \$147,723.

Q. I WANT TO CHANGE TOPICS WITH YOU IF WE COULD.

A. SURE.

Q. IN ADDITION TO THE INFORMATION THAT A PERSON REPORTS ON
HIS OR HER TAX RETURNS, THERE ARE OTHER WAYS THAT THE I.R.S.
HAS OF KNOWING HOW MUCH INCOME THEY EARNED IN A GIVEN YEAR?

A. YES.

Q. AND WHAT ARE THOSE WAYS?

A. THE MOST COMMON ONES ARE 1099'S FROM PLACES LIKE BANKS OR
BROKERAGE HOUSES OR THE FORMS W-2 FROM YOUR EMPLOYER.

Q. AND DO COPIES OF THOSE GO TO THE I.R.S.?

A. YES.

Q. AND BASED ON WHAT YOU HAVE LEARNED DURING YOUR WORK AS AN

1 I.R.S. EMPLOYEE, ARE FOREIGN BANKS REQUIRED TO ISSUE FORMS 1099
2 TO TAXPAYERS SETTING FORTH INTEREST THEY EARNED FROM THEIR
3 ACCOUNTS?

4 MR. SCHAINBAUM: YOUR HONOR, I OBJECT. THIS IS A
5 CONCLUSION, AND IT'S A VAGUE QUESTION. IF IT'S A SPECIFIC
6 BANK, IT STILL WOULD BE A CONCLUSION. HE'S NOT QUALIFIED TO
7 ANSWER THAT QUESTION.

8 THE COURT: WELL, IF YOU WANT TO JUST LAY A LITTLE
9 MORE FOUNDATION.

10 MS. SISKIND: YOUR HONOR, I ASKED BASED ON HIS
11 KNOWLEDGE DURING HIS 27 YEARS OF EXPERIENCE AT THE I.R.S.
12 WHETHER THE FOREIGN BANKS ARE REQUIRED TO ISSUE 1099'S.

13 THE COURT: IF YOU CAN ASK A COUPLE OF QUESTIONS AS
14 TO WHETHER OR NOT HE HAS EXPERIENCE WITH FBARS.

15 MS. SISKIND: IT WASN'T FBARS, YOUR HONOR, IT WAS
16 FORM 1099.

17 THE COURT: THANK YOU.

18 BY MS. SISKIND:

19 Q. DO YOU USE FORMS 1099 IN YOUR JOB AS A REVENUE AGENT?

20 A. YES, I DO ALL OF THE TIME.

21 Q. AND ARE YOU FAMILIAR WITH CIRCUMSTANCES UNDER WHICH THOSE
22 FORMS ARE OR ARE NOT ISSUED BY A BANK?

23 A. YES.

24 Q. AND YOU'VE WORKED FOR THE I.R.S. FOR 27 YEARS?

25 A. YES.

Q. AND BASED ON YOUR 27 YEARS OF EXPERIENCE WORKING WITH FORMS 1099 AND WORKING FOR THE I.R.S., DO YOU KNOW WHETHER FOREIGN BANKS ARE REQUIRED TO ISSUE FORMS 1099?

A. THEY ARE NOT REQUIRED TO.

Q. AND IF THE I.R.S. DOES NOT GET A 1099 FROM A BANK SHOWING INTEREST INCOME, HOW CAN THE I.R.S. KNOW HOW MUCH A PERSON EARNED IN INTEREST INCOME THAT YEAR?

A. OH, BECAUSE A PERSON REPORTS IT ON THEIR TAX RETURN.

Q. IF THE INTEREST INCOME IS NOT REPORTED TO THE I.R.S. ON A 1099, AND NOT REPORTED ON A PERSON'S TAX RETURN, DOES THE I.R.S. HAVE ANY WAY OF KNOWING ABOUT THAT INTEREST INCOME?

A. NO.

Q. NOW, IF THE INFORMATION THAT THE I.R.S. RECEIVES FROM, LET'S SAY, A BANK ON A FORM 1099 DOES NOT MATCH WHAT A PERSON PUTS ON A TAX RETURN, WHAT HAPPENS?

A. WELL, WHENEVER YOU FILE YOUR INCOME TAX RETURN, IT'S PUT INTO THE SERVICE CENTER COMPUTER AND THE SERVICE CENTER COMPUTER ALSO HAS THE 1099 INFORMATION, SO THEY MATCH IT UP.

AND IF SOMETHING DOESN'T MATCH, THEN YOU GET A LETTER FROM THE I.R.S. SAYING SOMETHING DIDN'T MATCH OR SOMETHING WASN'T REPORTED AND PLEASE TELL US WHY.

Q. AND THOSE TYPES OF LETTERS FROM THE I.R.S., ARE THEY COMMON REFERRED TO AS CORRESPONDENCE AUDITS?

A. YES.

Q. AND IS THAT DIFFERENT FROM THE TYPE OF AUDIT THAT YOU

WOULD DO AS A REVENUE AGENT?

A. YES. I DO WHAT IS CALLED A FIELD AUDIT.

Q. AND WHAT IS THE DIFFERENCE?

A. A CORRESPONDENCE AUDIT IS BASICALLY JUST EXACTLY WHAT IT SAYS. IT'S DONE BY MAIL AND YOU GET A LETTER, YOU RESPOND WITH A LETTER. AND THERE'S A PHONE NUMBER ON THERE, AND YOU CAN TALK TO SOMEBODY, BUT BASICALLY IT'S JUST BY MAIL.

IN A FIELD EXAMINATION, WHICH IS WHAT I DO, I CAN GO OUT TO THE PERSON'S PLACE OF BUSINESS OR TO THEIR ATTORNEY, OR THEIR ACCOUNTANT, AND TO INTERVIEW THEM OR LOOK AT RECORDS THERE.

Q. HAVE YOU REVIEWED I.R.S. RECORDS RELATING TO CORRESPONDENCE AUDITS IN THIS CASE?

A. YES.

Q. AND BASED ON YOUR REVIEW OF THOSE RECORDS, HAS ASHVIN DESAI EVER BEEN THE SUBJECT OF AN I.R.S. CORRESPONDENCE AUDIT?

A. MANY TIMES.

Q. FOR WHICH YEARS?

A. I BELIEVE IT'S AT LEAST 2003 THROUGH 2008.

Q. AND HAVE YOU REVIEWED RECORDS RELATING TO CORRESPONDENCE AUDITS THAT THE I.R.S. CONDUCTED OF THE DEFENDANT FOR THE YEARS 2003 THROUGH 2008?

A. YES.

Q. AND ARE THOSE RECORDS CONTAINED IN GOVERNMENT'S EXHIBIT 143 THROUGH 153?

1 A. YES.

2 MS. SISKIND: YOUR HONOR, THE GOVERNMENT MOVES FOR
3 THE ADMISSION OF EXHIBITS 143 THROUGH 153.

4 MR. SCHAINBAUM: YOUR HONOR, COULD WE HAVE A
5 SIDE-BAR?

6 THE COURT: YES, WE'LL TAKE OUR MORNING RECESS AT
7 THIS TIME. LADIES AND GENTLEMEN, WE'LL TAKE 15 MINUTES.

8 YOU MAY STAND DOWN, SIR.

9 THE WITNESS: OKAY, SURE. DO YOU WANT ME TO LEAVE?

10 THE COURT: YES.

11 THE WITNESS: OKAY.

12 (JURY OUT AT 10:32 A.M.)

13 THE COURT: ALL RIGHT. THE RECORD SHOULD REFLECT
14 THAT THE JURY HAS LEFT THE COURTROOM. THE WITNESS HAS LEFT THE
15 COURTROOM. ALL COUNSEL AND THE DEFENDANT ARE PRESENT.

16 MS. SISKIND, YOU'RE GOING TO -- IT LOOKS LIKE 143 THROUGH
17 153. ARE THEY SIMILAR EXHIBITS?

18 MS. SISKIND: THEY'RE SIMILAR EXHIBITS. THEY'RE
19 I.R.S. NOTICES, PART OF THE CORRESPONDENCE AUDITS FOR THE YEARS
20 2003 THROUGH 2008 ALL PERTAINING TO THIS DEFENDANT.

21 THE COURT: AND IS IT YOUR INTENTION TO -- WHAT DO
22 YOU INTEND TO DO WITH THESE?

23 MS. SISKIND: WELL, FIRST YESTERDAY DURING
24 MR. SCHAINBAUM'S CROSS-EXAMINATION OF TIM MATHERS, THE I.R.S.
25 RECORDS CUSTODIAN, HE INTRODUCED DEFENSE EXHIBITS K, L, AND M,

1 AND ASKED MR. MATHERS QUESTIONS ABOUT THOSE EXHIBITS.

2 IN PARTICULAR HE REFERRED MR. MATHERS TO A LINE ON EACH OF
3 THOSE TRANSCRIPTS THAT INDICATED THAT THERE WAS AN AUDIT THAT
4 OCCURRED, THAT ADDITIONAL TAX WAS ASSESSED, AND THAT WAS FOR
5 2007 AND 2008.

6 THIS -- THE RECORDS IN HERE ARE, PARTICULARLY THE ONES FOR
7 2007 AND 2008, CORRESPOND TO THOSE ENTRIES ON THE TRANSCRIPTS.
8 AND MR. OERTEL WILL TESTIFY THAT THERE'S A CONNECTION BETWEEN
9 THE TRANSCRIPTS INTRODUCED IN DEFENDANT'S K AND L AND SOME OF
10 THESE NOTICES. BUT THESE NOTICES ALSO GO A LITTLE FARTHER BACK
11 IN TIME AND SHOW OTHER AUDITS THAT THE DEFENDANT WAS THE
12 SUBJECT OF.

13 THE GOVERNMENT IS INTRODUCING THESE FOR A VERY SPECIFIC
14 PURPOSE AND THAT HAS TO DO WITH THE TIMING OF THE AUDITS.

15 IF THE GOVERNMENT -- EXCUSE ME. IF THE COURT -- PROBABLY
16 THE BEST WAY FOR ME TO EXPLAIN WHAT I'M TALKING ABOUT IS FOR
17 THE COURT TO LOOK AT EXHIBIT 157, WHICH WE'RE GOING TO GET TO
18 AT THE END OF GOING THROUGH THIS CORRESPONDENCE.

19 AND WHAT THE COURT CAN SEE IS ON THE RIGHT-HAND SIDE OF
20 THIS TIMELINE ARE THE DATES OF VARIOUS LETTERS THAT THE
21 DEFENDANT RECEIVED FROM THE I.R.S. RELATING TO THESE
22 CORRESPONDENCE AUDITS STARTING WITH EXHIBIT 143, WHICH IS DATED
23 MARCH 28TH, 2005, AND CONTINUING ALL OF THE WAY DOWN TO
24 EXHIBIT 153, WHICH IS DATED SEPTEMBER 7TH, 2010.

25 AND WHAT THE COURT WILL SEE, IF YOUR HONOR LOOKS AT ALL OF

1 THESE -- ALL OF THIS AUDIT PAPERWORK, EVERY SINGLE
2 CORRESPONDENCE AUDIT RELATED TO, AMONG OTHER THINGS, INTEREST
3 INCOME.

4 SO FOR THE ENTIRE TIME PERIOD OF 2005 THROUGH 2010 THE
5 DEFENDANT WAS REPEATEDLY RECEIVING LETTERS FROM THE I.R.S. ON
6 THE SUBJECT OF UNREPORTED INTEREST INCOME.

7 AT THE SAME TIME HE WAS MANAGING HIS AND HIS FAMILY'S
8 OFFSHORE ACCOUNTS AND FILING THE FALSE TAX RETURNS THAT ARE THE
9 SUBJECT OF THIS CASE. SO THESE AUDITS GO DIRECTLY TO
10 WILLFULNESS.

11 THEY -- THE COURT CAN SEE FROM LOOKING AT THE AUDIT
12 NOTICES THAT THEY ARE TELLING THE DEFENDANT HE LEFT CERTAIN
13 ITEMS OF INCOME OFF OF HIS RETURNS, IN FACT, LARGE AMOUNTS OF
14 INCOME FOR EACH YEAR AND FOR SOME OF THE YEARS.

15 AND THE GOVERNMENT WOULD LIKE TO BE ABLE TO ARGUE TO THE
16 JURY NOT THAT HE SHOULD BE CONVICTED BASED ON THIS UNREPORTED
17 INCOME IN THE AUDIT, THAT WOULD NOT BE APPROPRIATE, BUT THE
18 FACT THAT HE'S RECEIVING ONGOING NOTICE FROM THE GOVERNMENT
19 ABOUT HIS DUTY TO REPORT INTEREST INCOME ESTABLISHES
20 WILLFULNESS WITH RESPECT TO HIS FAILURE TO REPORT THE INTEREST
21 INCOME AS ALLEGED IN THE INDICTMENT.

22 AND THERE'S A COMPLETE OVERLAP OF THE TIME PERIOD HERE.
23 THE CORRESPONDENT AUDITS BEGAN AROUND THE TIME HE REACTIVATED
24 HIS HSBC INDIA ACCOUNT, AND THEY CONTINUE UNTIL AFTER HE FILED
25 THE LAST TAX RETURN THAT'S THE SUBJECT OF THE INDICTMENT.

1 AND IT'S THAT TIMELINE THAT ESTABLISHES A LINK BETWEEN
2 THESE AUDITS AND THE DEFENDANT'S MENTAL STATE.

3 THE COURT: THE INTEREST THAT YOU MENTION, FOR
4 EXAMPLE, ON 143, WHERE IS THAT SPECIFICALLY NOTED?

5 MS. SISKIND: IF YOUR HONOR STARTS ON PAGE -- WELL,
6 FIRST I WOULD NOTE THAT THE BEGINNING IT SAYS WHY ARE YOU
7 GETTING THIS NOTICE? BECAUSE THE INCOME AND PAYMENT
8 INFORMATION THAT WE HAVE ON FILE DOES NOT MATCH YOUR TAX
9 RETURNS.

10 AND THEN STARTING ON PAGE 5 AND CONTINUING IN THIS
11 PARTICULAR EXHIBIT ALL OF THE WAY THROUGH PAGE 13 THERE'S A
12 CHART IN WHICH THE I.R.S. SETS FORTH VARIOUS ITEMS OF INCOME,
13 MOSTLY AS REPORTED ON FORMS 1099, THAT THEY GOT FROM
14 INFORMATION ABOUT FROM THIRD PARTIES AND THAT WERE NOT
15 REFLECTED ON THE DEFENDANT'S RETURN.

16 AND THEN THE NOTICE GIVES HIM AN OPPORTUNITY TO COME BACK
17 AND SAY, THAT'S RIGHT, OR THAT'S WRONG, AND THERE'S GOING TO BE
18 SOME EVIDENCE THAT THERE WAS A BACK AND FORTH BETWEEN THE
19 DEFENDANT AND THE I.R.S. FOR AT LEAST ONE YEAR ON THE SUBJECT
20 OF INTEREST INCOME.

21 BUT THIS IS A CONSISTENT ONGOING REMINDER TO THE DEFENDANT
22 OF HIS DUTY TO REPORT INTEREST INCOME ON HIS TAX RETURNS, AND
23 IT GOES TO THE HEART OF THIS CASE, WHICH IS WILLFULNESS.

24 THE COURT: SO I SEE THERE'S SOME BANKS LISTED HERE
25 AND OTHER LENDING INSTITUTIONS, I PRESUME, THAT ARE NOT BANKS

1 THAT ARE PART OF THE TRIAL?

2 MS. SISKIND: YES.

3 THE COURT: AND I'M JUST CURIOUS ABOUT WHY THIS JURY
4 SHOULD HAVE THAT INFORMATION.

5 MS. SISKIND: THE ISSUE IS NOT WHAT BANKS ARE
6 INVOLVED, IT'S THE FACT THAT THERE IS INTEREST INCOME THAT THE
7 I.R.S. IS SAYING, SIR, YOU LEFT OFF OF YOUR TAX RETURNS AND YOU
8 NEEDED TO REPORT.

9 AND IT'S THAT REMINDER, NOT THE SPECIFIC IDENTITY OF ANY
10 GIVEN BANK THAT IS THE ISSUE, THAT HE'S BEING TOLD OVER AND
11 OVER AGAIN OVER A FIVE-YEAR PERIOD, REMINDED ABOUT HIS LEGAL
12 DUTY TO REPORT INTEREST INCOME ON A TAX RETURN, WHICH GOES TO
13 THE HEART OF WILLFULNESS BECAUSE HE IS CHARGED WITH FAILING TO
14 REPORT INTEREST INCOME.

15 THE COURT: I UNDERSTAND THAT PART. I HAVE SOME
16 CONCERNS, I HAVE TO EXPRESS THIS TO YOU, ABOUT THESE OTHER
17 BANKS THAT SEEM TO REPORT INTEREST, AND THE I.R.S., IT LOOKS
18 LIKE, IT RECEIVED INFORMATION FROM MANY OTHER INSTITUTIONS THAT
19 THERE WERE INTEREST PAYMENTS. AND I THINK WE GET INTO A 404(B)
20 SITUATION HERE.

21 AND IT SEEMS TO BE CUMULATIVE OF OTHER WRONGDOING,
22 PERHAPS. I DON'T WANT THIS JURY TO LOOK AT THIS AND TO SAY,
23 GEE, HE HASN'T BEEN DECLARING INTEREST FROM ALL OF THESE OTHER
24 BANKS, THEREFORE, JUST BASED ON THAT ALONE WE SHOULD FIND HIM
25 GUILTY OF NOT DOING IT HERE.

1 I JUST HAVE SOME PROBLEMS WITH THAT. AND I'M CURIOUS
2 WHETHER EVEN AN INSTRUCTION TO THE JURY AS TO HOW, A LIMITING
3 INSTRUCTION, AS TO HOW THEY SHOULD TREAT THIS EVIDENCE, IF
4 THAT'S SUFFICIENT, GIVEN THE BREVITY OR I SHOULD SAY THE
5 BROADNESS OF THIS.

6 MS. SISKIND: WELL, FIRST, YOUR HONOR, THAT WAS
7 NEVER AN ARGUMENT THAT WE INTENDED TO MAKE TO THE JURY.

8 OUR FOCUS ON THESE IS TIMING, THE FACT THAT EACH NOTICE IS
9 ON A CERTAIN DATE WHICH BEARS RELEVANCE TO THE TIMELINE IN THIS
10 AND THAT EACH NOTICE RELATES TO UNREPORTED INTEREST INCOME.

11 THE DOLLAR AMOUNTS OF THE UNREPORTED INTEREST INCOME AND
12 THE IDENTIFY OF THE BANK IS LESS IMPORTANT THAN THE FACT THAT
13 THE DEFENDANT IS BEING AUDITED BY THE I.R.S. FOR FAILURE TO
14 REPORT INTEREST INCOME AND THAT EACH NOTICE IS ANOTHER REMINDER
15 TO HIM OF HIS LEGAL DUTY TO DO SO.

16 THE COURT: AND IS IT NECESSARY TO HAVE ALL OF THE
17 SPECIFICS THEN? CAN'T YOU JUST GET INTO THE FIRST PAGE, FOR
18 EXAMPLE, WHICH INDICATES AS MUCH?

19 MS. SISKIND: WELL, THE FIRST PAGE DOES NOT SAY THAT
20 THE TYPE OF INCOME THAT THEY'RE BASING IT ON IS INTEREST
21 INCOME.

22 THE COURT: I THOUGHT IT DID. IT SAYS, "THE INCOME
23 AND TAX AND PAYMENT INFORMATION, E.G., INCOME TAX WITHHELD,
24 WAGES, MISCELLANEOUS INCOME, INTEREST, ET CETERA."

25 MS. SISKIND: SO THAT'S JUST LISTING THE VARIOUS

1 TYPES OF INCOME THAT COULD BE THE SUBJECT OF THIS NOTICE. I
2 THINK THAT'S BOILERPLATE AND NOT SPECIFIC.

3 IT'S ONLY WHEN YOU GET INTO THE CHART AND IT'S CLEAR --
4 FOR EXAMPLE, IF THE COURT LOOKS AT PAGE 5.

5 THE COURT: RIGHT.

6 MS. SISKIND: IN THE CHART IT'S INTEREST, INTEREST,
7 INTEREST, INTEREST. AND IT GOES ON TO THE NEXT PAGE AND IT
8 KEEPS GOING.

9 THE COURT: RIGHT. AND DOES IT LIST THE
10 INSTITUTIONS THAT ARE PART OF THIS LAWSUIT?

11 MS. SISKIND: HSBC IS NOT REFERENCED HERE BECAUSE
12 THE I.R.S. CORRESPONDENCE AUDITS CAN ONLY BE BASED ON 1099'S
13 AND THERE WERE NONE.

14 WHAT IS IMPORTANT, WHY WE WANTED TO USE THESE IS THE FACT
15 THAT THEY'RE TALKING ABOUT INTEREST AS THE TYPE OF INCOME AT
16 ISSUE. WE'RE NOT REALLY INTERESTED IN THE DOLLAR AMOUNTS OR
17 THE FINANCIAL INSTITUTIONS.

18 THE COURT: SURE.

19 MS. SISKIND: AND I THINK THE POINT CAN BE MADE WITH
20 THESE DOCUMENTS JUST BASED ON THE DATE, WHAT THE NATURE OF THE
21 NOTICE IS, AND THE FACT THAT THERE'S A CHART WHERE EACH ITEM
22 SAYS INTEREST, INTEREST, INTEREST, INTEREST OVER AND OVER
23 AGAIN.

24 THE COURT: I SEE THAT, BUT I HOPE YOU SEE MY POINT
25 ABOUT IT JUST SEEMS TO BE CUMULATIVE OF SO MANY INTERESTS.

1 NOW, I JUST DON'T WANT, AS I SAID, I DON'T WANT -- I DON'T
2 THINK THAT A LIMITING INSTRUCTION, GIVEN WHAT YOU WANT TO DO
3 WITH THESE, MIGHT EVEN BE SUFFICIENT.

4 MS. SISKIND: YOUR HONOR, WE WANT TO BE ABLE TO
5 BRING OUT FROM THIS WITNESS THAT THERE WAS A NOTICE ON A
6 CERTAIN DATE THAT RELATES TO UNREPORTED INTEREST INCOME. IF
7 THERE'S A WAY THAT WE CAN DO THAT WITHOUT INDICATING 59
8 DIFFERENT ITEMS OF INTEREST INCOME, I THINK THE POINT STILL CAN
9 BE MADE.

10 THE COURT: ARE ALL OF THE OTHER EXHIBITS OF THE
11 SAME MANNER AND CHARACTER?

12 MS. SISKIND: YES.

13 THE COURT: YEAH, I THINK THAT -- WELL, I HAVEN'T
14 HEARD FROM MR. SCHAINBAUM, BUT I THINK WE MIGHT WANT TO DO A
15 LITTLE WORK ON THIS.

16 MR. SCHAINBAUM?

17 MR. SCHAINBAUM: YOUR HONOR, I AGREE WITH YOUR
18 ANALYSIS, AND I THINK THE PROBLEM IS SOLVED IF YOU CONSIDER
19 THAT THE TAX YEARS HERE ARE 2007, 2008, AND 2009.

20 IF YOU RECALL, I -- WHEN THE CUSTODIAN OF RECORDS FROM THE
21 I.R.S. WAS HERE, MR. MATHERS, I INTRODUCED K, L, AND M. THOSE
22 ARE FOR THE YEARS 2007, '08, AND '09.

23 AND I ASKED HIM, DOES THIS COVER ALL OF THE TRANSACTIONS
24 OF THE YEAR? AND IT DOES. AND IT DOES IN A WAY THAT IS
25 INNOCUOUS, THAT SHOWS THE ORIGINAL TAX RETURN, THE SUBSEQUENT

1 NOTICES ON THAT, AND THE SUBSEQUENT PAYMENTS, AND THE FACT THAT
2 AT THE END OF THE DAY, SO TO SPEAK, THE ACCOUNT IS AT A ZERO
3 BALANCE. IT'S NEUTRAL.

4 NOW, SINCE MR. OERTEL IS SUPPOSEDLY A 27-YEAR REVENUE
5 AGENT, HE CAN READ THAT TRANSCRIPT, AND MS. SISKIND CAN ASK HIM
6 QUESTIONS. WHAT DOES CODE 290 MEAN?

7 IF YOU RECALL, MR. MATHERS SAID I DON'T RECALL WHAT IT
8 ACTUALLY SHOWS IN RESPONSE TO A QUESTION BY MR. KENNEDY ABOUT
9 WHETHER THERE WERE AMENDED RETURNS.

10 SO THERE'S COMPLETE -- IF YOU WANT TO GO INTO THOSE THREE
11 TRANSCRIPTS, THEY COVER ONLY THE THREE TAX YEARS BEFORE THIS
12 COURT.

13 THIS OTHER CP AUDITS NOTICES, IN ALL FAIRNESS, COVER MORE
14 THAN JUST INTEREST. THEY COVER A WHOLE LOT MORE, AND THEY
15 COVER DIVIDENDS, AND THEY COVER BASIS PROBLEMS WHERE THE I.R.S.
16 WOULDN'T GIVE THEM CREDIT BASIS AND HAD TO GO BACK AND GET THE
17 BASIS AND THE ORIGINAL LIABILITY WENT DOWN TO VERY LITTLE.

18 BUT YOU'RE RIGHT, YOU PUT THIS BEFORE THE JURY AND THEY,
19 AND EVEN WITH A LIMITING INSTRUCTION, I DON'T THINK IT CAN BE
20 OVERCOME.

21 BUT I THINK IF MS. SISKIND IS GENUINE ABOUT WHAT SHE WANTS
22 TO DO WITH THIS, SHE CAN GET IT FROM THE EXHIBITS K, L, AND M.

23 THE COURT: WELL, I DON'T KNOW ABOUT THAT, BUT I
24 DO --

25 MS. SISKIND: I HAD A POSSIBLE SOLUTION IF THE COURT

1 WANTS TO HEAR IT.

2 THE COURT: OKAY.

3 MS. SISKIND: SO I UNDERSTAND THE COURT'S POSITION
4 AND HOW THIS DOES TOUCH ON 404(B) ISSUES, BUT AT THE SAME TIME
5 THE TIMELINE IS IMPORTANT BECAUSE IT'S NOT JUST 2007, 2008, AND
6 2009 BECAUSE HE STARTED RECEIVING THESE I.R.S. NOTICES ALL
7 THROUGHOUT THE TIME PERIOD AT ISSUE IN THIS CASE.

8 WHAT I WOULD PROPOSE DOING, IN THE INTEREST OF EXPEDIENCY
9 AND NOT HAVING TO GET INTO ANY 404(B) ISSUES, IS TO TAKE
10 EXHIBIT 157, MAKE SOME CHANGES TO IT, AND ADMIT IT AS A 1006
11 SUMMARY. SO THE JURY WON'T BE EXPOSED TO THE UNDERLYING
12 NOTICES THAT LIST OUT AD NAUSEAM THE ITEMS OF INCOME THAT THE
13 DEFENDANT FAILED TO REPORT.

14 WE WOULD PROPOSE AMENDING IN THE RIGHT-HAND COLUMN OF 157,
15 WE WOULD SAY LETTER FROM I.R.S. REGARDING UNREPORTED INTEREST
16 INCOME FOR 2003. SO THAT DOESN'T GET INTO THE BANKS OR IT
17 DOESN'T GET INTO AMOUNTS, AND IT MAKES THE POINT THAT THERE IS
18 INTEREST INVOLVED. AND THEN WE TAKE OUT THE EXHIBIT REFERENCES
19 BECAUSE THOSE WOULD NOT BE EXHIBITS ANYMORE.

20 SO WHAT MR. OERTEL WOULD TESTIFY TO IS THAT HE REVIEWED
21 CORRESPONDENCE AUDIT RECORDS, AND HE PREPARED A SUMMARY OF
22 THOSE RECORDS, AND HE WOULD BE ABLE TO READ OFF THE DATE OF THE
23 NOTICE, GENERALLY WHAT IT RELATES TO, AND WHAT TAX YEAR AND HOW
24 THAT FITS INTO THE TIMELINE OF THE CASE.

25 SO ALL THE JURY WOULD SEE IS 157, WITHOUT SEEING THOSE

1 VOLUMINOUS NOTICES AND EVERY ITEM OF INCOME THAT WAS
2 UNREPORTED.

3 MR. SCHAINBAUM: YOUR HONOR, I VIGOROUSLY OBJECT TO
4 THAT. THAT'S EVEN WORSE, AS THEY SAY, THAT'S WORSE THAN THE
5 DISEASE. THAT'S NOT A CURE. THAT WOULD BE HIGHLY PREJUDICE.

6 PLUS MS. SISKIND KEEPS CALLING IT "UNREPORTED INTEREST
7 INCOME." IT'S REALLY "UNDERREPORTED" BECAUSE THERE WERE ITEMS
8 OF INCOME REPORTED.

9 BUT TO GO ON THIS SO-CALLED TIMELINE, WE'RE CONFINED HERE
10 TO 2007, 2008, AND 2009.

11 THE COURT: BUT THE GOVERNMENT, ONE OF THE ELEMENTS
12 THAT THE GOVERNMENT MUST PROVE IS WILLFULNESS AND THEY CAN
13 INTRODUCE EVIDENCE TO PROVE WILLFULNESS.

14 WHAT MS. SISKIND SUGGESTS IS THAT THIS 143 THROUGH 153, I
15 THINK, ESTABLISH NOTICE FROM THE I.R.S. ABOUT INTEREST ISSUES.
16 SO YOUR CLIENT IS ON NOTICE THAT THE I.R.S. BELIEVES THAT
17 HAVING A CONVERSATION WITH HIM, THEY'RE CONCERNED ABOUT
18 INTEREST.

19 AND HER 157 SEEKS TO BASICALLY MERGE THOSE CONVERSATIONS
20 WITH MR. DESAI'S ACTIVITIES WITH HIS ACCOUNTS, I BELIEVE, AND
21 THAT SHOWS WILLFULNESS.

22 AND, YOU KNOW, THE GOVERNMENT IS PERMITTED TO PROVE
23 WILLFULNESS. THE QUESTION IS WHETHER OR NOT THEY CAN PROVE ALL
24 OF THESE OTHER ACCOUNTS AND THINGS, AND I THINK THAT'S REALLY A
25 404(B) PROBLEM.

1 MS. SISKIND: AND WE'RE WILLING TO RESOLVE THAT BY
2 JUST FOCUSING ON A SUMMARY CHART. THIS WOULD CONSTITUTE -- IF
3 WE DON'T PUT 143 THROUGH 153 IN EVIDENCE, 157 DOES BECOME A
4 PROPER 1006 SUMMARY BECAUSE IT'S SUMMARIZING VOLUMINOUS RECORDS
5 THAT WERE AVAILABLE TO THE DEFENSE THAT ARE NOT BEING PLACED
6 BEFORE THE JURY.

7 LIKE I SAID, WE WOULD HAVE TO MAKE THE CHANGE, AND THAT
8 CAN BE DONE IN THE COURTROOM, TAKING OFF THE REFERENCES TO THE
9 EXHIBIT, WHICH WOULD NOT BE EXHIBITS ANYMORE, AND WE WOULD ASK
10 PERMISSION TO CHANGE IT TO LETTER FROM I.R.S. REGARDING
11 UNREPORTED INTEREST INCOME WHICH THEN MAKES THE POINT THAT
12 REALLY THE ESSENTIAL POINT THAT WE WERE GOING TO TRY TO MAKE
13 OFF OF THE NOTICES ANYWAY.

14 THE COURT: BUT DOES THAT THEN DENY THE DEFENSE THE
15 OPPORTUNITY TO AT LEAST TOUCH UPON THE LETTERS?

16 MS. SISKIND: THEY CAN INTRODUCE THE LETTERS THEN IF
17 THEY WOULD LIKE.

18 THE COURT: WELL, THAT'S THE PROBLEM IS THAT IT'S
19 STILL 404(B) TYPE EVIDENCE, AND THEY'RE PUT IN A POSITION OF
20 HAVING TO INTRODUCE THAT TYPE OF EVIDENCE TO EXPLAIN AWAY THE
21 SAME TYPE OF EVIDENCE.

22 MS. SISKIND: AND WE'RE STILL IN A POSITION, YOUR
23 HONOR, WHERE THE DEFENSE IS THE ONES THAT OPENED THE DOOR TO
24 AUDITS IN THE FIRST PLACE. THEY'RE LEAVING THE JURY WITH AN
25 INAPPROPRIATE IMPRESSION THAT THE DEFENDANT HAD A ZERO BALANCE.

1 THE COURT: WELL, I DID NOTE THAT, THAT K, L, M
2 SPEAKS TO THESE TRANSCRIPTS THAT WE TALKED ABOUT, AND I THINK
3 THE GOVERNMENT IS ALLOWED TO AT LEAST ELABORATE ON WHAT DOES
4 THE TRANSCRIPT MEAN AND WHAT IS THE CONVERSATION ABOUT THAT
5 TRANSCRIPT. INTRODUCING THESE DOCUMENTS AS THEY ARE, 142
6 THROUGH 153, ARE CERTAINLY THE BEST EVIDENCE OF THAT
7 CONVERSATION, OUTSIDE OF THE TIMING. I DON'T WANT TO TALK
8 ABOUT THAT YET.

9 BUT THE ISSUE IS CAN THEY BE REDACTED SOMEHOW?

10 IT SOUNDS LIKE MR. SCHAINBAUM IS NOT AGREEABLE TO 157
11 BEING TREATED AS A 1006 EXHIBIT.

12 MR. SCHAINBAUM: CORRECT.

13 MS. SISKIND: WE'RE WILLING TO MAKE ANY REDACTIONS
14 TO 143 THROUGH 153 THAT THE COURT SUGGESTS, AS LONG AS WHAT IS
15 LEFT AFTER THE REDACTIONS IS THAT THIS WAS A NOTICE FROM THE
16 I.R.S. ON A PARTICULAR DATE REGARDING INTEREST INCOME THAT THE
17 DEFENDANT FAILED TO REPORT ON THE TAX RETURN AT ISSUE.

18 AS I INDICATED, IT'S NOT THE IDENTITY OF THE BANKS OR EVEN
19 THE DOLLAR AMOUNTS THAT ARE NECESSARY TO MAKE THAT POINT ON
20 WILLFULNESS, IT'S THE SUBJECT MATTER GENERALLY OF EACH AUDIT
21 AND THE DATE ON WHICH IT OCCURRED.

22 THE COURT: SO WHEN I LOOKED AT THE EXHIBIT 143, FOR
23 EXAMPLE, AND THERE'S --

24 MR. SCHAINBAUM: YOUR HONOR?

25 THE COURT: YES.

1 MR. SCHAINBAUM: MAYBE AS A SUGGESTION, MAYBE LIMIT
2 THESE LETTER NOTICES TO 2007 AND '08. THAT PUTS IT IN TANDEM
3 WITH THE K, L, AND M AND GIVES THEM WHAT THEY WANT TO ARGUE.

4 I MEAN, HER ATTEMPTING TO USE IT FOR WILLFULNESS IN A
5 CIRCUMSTANTIAL EVIDENCE MANNER AND --

6 THE COURT: I THINK THEY CAN DO THAT.

7 MR. SCHAINBAUM: I AGREE WITH YOU THAT YOU CAN, YOU
8 KNOW, PUT WILLFULNESS IN ISSUE BY CIRCUMSTANTIAL EVIDENCE AND
9 YOU CAN PUT LACK OF WILLFULNESS IN BY CIRCUMSTANTIAL EVIDENCE.

10 THE COURT: SURE.

11 MR. SCHAINBAUM: BUT I'M JUST SAYING THAT TO BE
12 FAIR, THIS IS A TAX CASE INVOLVING 2007, '08, AND '09.

13 YOU MAY WANT TO CONSIDER BY LOOKING AT THE EXHIBITS FOR
14 2007 AND 2008. I BELIEVE THERE ARE THREE LETTERS FOR 2007 AND
15 ONE FOR 2008.

16 AND THEY TELL THE STORY AND THEN THEY CAN DO WHAT THEY
17 WANT WITH THAT STORY. AND THEN IT GIVES US A FAIR CHANCE BY
18 USING THOSE LETTERS TO ASSOCIATE IT WITH THE TRANSCRIPTS AND
19 SAY, LOOK, HERE ARE THE LETTERS AND HERE'S WHAT HAPPENED ON THE
20 TRANSCRIPT, AND YOU GET A ZERO BALANCE.

21 THE COURT: I UNDERSTAND. BUT, MR. SCHAINBAUM,
22 ISN'T THE GOVERNMENT PERMITTED TO INTRODUCE OTHER EVIDENCE IN
23 REGARDS TO THE ISSUE OF WILLFULNESS, PARTICULARLY IN TAX CASES,
24 TO SHOW A TAXPAYER'S INTENT OR WILLFULNESS?

25 MS. SISKIND?

1 MS. SISKIND: YES, YOUR HONOR. PARTICULARLY, I
2 THINK 157 VISUALLY ILLUSTRATES EXACTLY WHAT WE'RE TRYING TO DO.
3 EVEN BEFORE REACTIVATING THE ACCOUNT THAT IS THE SUBJECT OF
4 THIS CASE, HE WAS GETTING NOTICES ABOUT INTEREST INCOME.
5 THROUGHOUT THE TIME PERIOD AT ISSUE IN THIS CASE, HE WAS
6 GETTING NOTICES ABOUT INTEREST INCOME.

7 THE COURT: AND THIS SPEAKS, MR. SCHAINBAUM, TO YOUR
8 SUGGESTION OF LIMITING IT TO '07 AND '08. I THINK THE
9 GOVERNMENT IS PERMITTED TO PRODUCE TAXPAYER HISTORY AND CONDUCT
10 IN REGARDS TO ESTABLISHING WILLFULNESS IN TAX CASES.

11 MR. SCHAINBAUM: BUT THAT'S TOO FAR REMOTE. YES,
12 YOU CAN PUT IN A HISTORY. THAT'S WHAT I'M SAYING, HERE'S THE
13 HISTORY IN THE RELEVANT YEARS.

14 MS. SISKIND IS ALWAYS USING "IT'S NOT RELEVANT," AND EVEN
15 AS FOR WILLFULNESS, GOING BACK TO THE YEAR 2003 --

16 THE COURT: LET ME ASK -YOU, PARDON ME FOR
17 INTERRUPTING. WHY 2003?

18 MS. SISKIND: BECAUSE 2003 -- AS THE COURT MAY BE
19 AWARE, THE I.R.S., WHEN THEY'RE AUDITING, THE NOTICE MAY COME
20 OUT FOR SOME YEARS LATER. THE FIRST NOTICE FOR 2003 YEAR IS
21 DATED MARCH 28TH, 2005, AND IT PREDATES THE DEFENDANT
22 REACTIVATING HIS ACCOUNT.

23 WE WOULD ARGUE TO THE JURY THAT FROM DAY ONE FROM THE
24 MOMENT THAT THE DEFENDANT REACTIVATED ACCOUNT 3679 IN JULY OF
25 2006 INTEREST INCOME AND REQUIRED TO REPORT HAD ALWAYS BEEN IN

1 HIS MIND BECAUSE HE STARTED RECEIVING NOTICES THE PREVIOUS YEAR
2 ABOUT INTEREST INCOME.

3 THE COURT: SO THE ONLY REASON IT'S 2003 IS BECAUSE
4 THE LETTER HE RECEIVED IN RE 2003 WAS RECEIVED IN '05?

5 MS. SISKIND: THAT'S CORRECT.

6 THE COURT: THAT MAKES IT CLOSER TO THE TIME IN
7 QUESTION, MR. SCHAINBAUM. AND I CERTAINLY -- IT SEEMS TO ME
8 THAT THAT'S PERSUASIVE. I DID HAVE SOME CONCERNS ALSO WHEN I
9 SAW 2003, AND I THOUGHT THAT'S WELL OUTSIDE OF THE CHARGING
10 PERIOD. BUT IF THAT'S THE DATE OF THE LETTER, THE LETTER IS
11 REALLY WHAT THE KEY DATE IS, WHEN THE LETTER WAS RECEIVED.

12 MS. SISKIND: YES, YOUR HONOR.

13 THE COURT: THE TAX YEAR IS, PERHAPS, NOT AS --
14 WELL, IT'S RELEVANT BUT IT'S NOT AS GREAT AS THE ACTUAL RECEIPT
15 OF THE LETTER WHICH PUTS SCIENTER INTO ISSUE AND THAT HAPPENS
16 IN '05.

17 MS. SISKIND: YES, YOUR HONOR.

18 THE COURT: SO I CAN CERTAINLY UNDERSTAND NOW THAT
19 NEXUS AND THAT ESTABLISHES THE NEXUS.

20 I THINK YOU STILL HAVE THE PROBLEM OF I'LL CALL IT
21 CUMULATIVE AND PREJUDICIAL ASPECT OF HAVING I THINK IT WAS 38
22 OR 18 OR SOMETHING LIKE THAT.

23 NOW, I DON'T KNOW HOW YOU FEEL ABOUT, PERHAPS, YOU JUST
24 REDACT ALL OF THOSE ACCOUNTS LEAVING THE INTEREST ISSUE.

25 MS. SISKIND: I THINK THAT'S FINE.

1 THE COURT: AND, AGAIN, IS 18 -- IS THAT TOO MANY?
2 HOW MANY DO YOU NEED TO MAKE THE POINT WHERE IT BECOMES
3 CUMULATIVE? THAT IS DECISION I NEED TO MAKE. AND I'M HAPPY TO
4 HEAR FROM YOU.

5 MS. SISKIND: BUT CERTAINLY ON THE REDACTION ISSUE,
6 FOR EXAMPLE, LOOKING BACK AT PAGE 5 OF EXHIBIT 143, WE CAN
7 REDACT THE CONTENTS OF RECEIVED FROM, ACCOUNT INFORMATION,
8 AMOUNT REPORTED TO I.R.S. BY OTHERS COLUMN, LEAVING THE ISSUE,
9 WHICH IS REALLY WHAT WE'RE GETTING AT HERE, THE ISSUE OF THIS
10 AUDIT WAS INTEREST INCOME.

11 THE COURT: THAT'S MY POINT AS WELL.

12 MS. SISKIND: IN TERMS OF HOW MANY PAGES, AND WHAT
13 PAGES TO TAKE OUT, I DON'T REALLY HAVE --

14 THE COURT: I MEAN, THERE'S 13 -- THERE'S 40 ITEMS.

15 MS. SISKIND: WE WOULD ARGUE THAT THAT JUST SHOWS
16 EVEN MORE NOTICE. I MEAN, THERE WERE 40 ITEMS OF INTEREST
17 INCOME THAT THE I.R.S. IS TELLING HIM HE LEFT OFF OF HIS TAX
18 RETURN, AND IT EVEN HEIGHTENS THE PROBATIVE VALUE OF THIS
19 DOCUMENT IN TERMS OF BEING NOTICE TO HIM ABOUT HE NEEDED TO
20 REPORT INTEREST INCOME.

21 THE COURT: AND THAT'S DOCUMENT 26 ITEMS.

22 MR. SCHAINBAUM: BY REDACTING IT, IT MAKES IT EVEN
23 WORSE BECAUSE WHAT YOU ARE DOING IS, YOU'RE TAKING OUT WHAT WAS
24 REPORTED ON THE RETURNS.

25 THIS IS NOT REALLY UNREPORTED, IT'S UNDERREPORTED. AND BY

1 TAKING OUT THE OTHER INFORMATION, IT'S SHOWING THAT MR. DESAI
2 GETS THESE NOTICES. AND HE'S OBEDIENT. ALL OF THE WAY THROUGH
3 HE SOLVES THE PROBLEM WITH THE I.R.S.

4 THE COURT: IS THAT WHAT THE TRANSCRIPT REVEALS
5 THEN?

6 MR. SCHAINBAUM: THE TRANSCRIPT REVEALS THAT.

7 THE COURT: SO THAT KIND OF, IT SEEMS TO ME, THAT
8 AUGURS TO MOLLIFY SOMEWHAT THE 404(B) NATURE OF THIS, IF YOU
9 WILL, BECAUSE YOU CAN INDICATE THAT, WELL, YES, THE I.R.S.
10 THOUGHT THERE WAS A PROBLEM BUT ACCORDING TO THE TRANSCRIPTS HE
11 CLEARED IT UP.

12 MR. SCHAINBAUM: BUT WE DON'T HAVE TRANSCRIPTS FOR
13 2003, 2004, AND 2005. THAT'S WHY I SAID IF YOU WANT TO LIMIT
14 IT TO 2007 AND '08, WE HAVE TRANSCRIPTS FOR 2007, 2008, AND
15 2009. THAT GIVES US A FAIR SHOT AT THE REVERSE OF WILLFULNESS.

16 MS. SISKIND: YOUR HONOR, IS THERE ANYTHING THAT
17 PREVENTS THE DEFENSE -- I THINK THEY WENT ONLINE TO GET THE
18 TRANSCRIPTS. THEY INDICATE THAT THEY WERE PRINTED OUT FROM A
19 COMPUTER SYSTEM.

20 I DON'T KNOW THE ANSWER, BUT THEY SEEM TO HAVE BEEN ABLE
21 TO GET UPDATED VERSIONS IN ORDER TO GIVE TO US THIS WEEK OF
22 '07, '08, AND '09.

23 THE COURT: MR. SCHAINBAUM IS SHAKING HIS HEAD.

24 MR. SCHAINBAUM: YOU CAN'T GET TRANSCRIPTS FOR 2003,
25 2004, AND 2005. I THINK THEY'RE TOO REMOTE. SO IT WOULD BE AN

1 UNFAIR -- BECAUSE I.R.S. SENDS ON A CONTINUOUS BASIS NOTICES,
2 MANY OF WHICH ARE ERRONEOUS.

3 THE COURT: WELL, LET ME INTERRUPT YOU HERE. CAN
4 YOU OBTAIN THESE TRANSCRIPTS THROUGH THE I.R.S., MS. SISKIND?

5 MS. SISKIND: WE CAN CHECK.

6 THE COURT: OKAY.

7 MS. SISKIND: IN THE MEANTIME IT MIGHT HELP US TO
8 HAVE A DECISION ON THE REDACTION BECAUSE WE CAN GET STARTED ON
9 THAT.

10 THE COURT: AND I NOTICE THAT IT'S 11:00 O'CLOCK,
11 AND WE WERE KEEPING OUR JURY UNTIL NOON TODAY. I DON'T THINK
12 WE'RE GOING TO SOLVE THIS PROBLEM IN TIME TO HAVE ANY
13 MEANINGFUL CONTINUATION OF THE EXAMINATION.

14 MS. SISKIND: AND AS LONG AS WE HAVE A RESOLUTION
15 BEFORE WE LEAVE TODAY ON THIS ISSUE, WE CAN OVER THE EVENING
16 MAKE WHATEVER CHANGES.

17 THE COURT: I THINK WHAT I MIGHT DO IS BRING THEM IN
18 AND THEN RELEASE THEM FOR THE DAY AND HAVE THEM COME TOMORROW
19 AT 10:30, WE'LL TAKE A FIVE MINUTE BREAK, AND THEN WE'LL COME
20 BACK AND TALK SOME MORE ABOUT THIS SOLUTION.

21 MS. SISKIND: OKAY.

22 THE COURT: IS THAT ALL RIGHT, MR. SCHAINBAUM?

23 MR. SCHAINBAUM: YES, YOUR HONOR.

24 THE COURT: AND, MS. SISKIND?

25 MS. SISKIND: YES.

1 THE COURT: LET'S BRING THEM IN.

2 (JURY IN AT 10:59 A.M.)

3 THE COURT: WE'RE BACK ON THE RECORD IN THE DESAI
4 MATTER. ALL COUNSEL ARE PRESENT, AND THE DEFENDANT IS PRESENT,
5 AND THE JURY AND ALTERNATES ARE PRESENT.

6 LADIES AND GENTLEMEN, I WANT TO THANK YOU FOR YOUR
7 PATIENCE. I LOOKED AT THE CLOCK JUST A MINUTE AGO, AND IT WAS
8 11:00. AND WE WILL RECESS AGAIN TODAY AT NOON, AND THAT WAS
9 OUR PLAN.

10 I NEED TO CONTINUE MY CONVERSATION WITH THE LAWYERS. AND
11 I THINK THE BEST WAY TO ACCOMPLISH THAT, SO AS NOT TO INFRINGE
12 ANYMORE ON YOU, IS TO RELEASE YOU NOW TODAY AT 11:00 O'CLOCK,
13 ABOUT AN HOUR EARLY.

14 I JUST THINK THAT'S MORE PRUDENT. BY THE TIME WE FINISH
15 OUR CONVERSATION, THAT MIGHT LEAVE US WITH TEN MINUTES OF
16 EXAMINATION. AND I THINK THAT'S A WASTE OF YOUR TIME, AND I AM
17 COGNIZANT OF YOUR TIME. AND I APOLOGIZE FOR THE BREAKS IN THE
18 SCHEDULES.

19 I DO DRAW BACK TO OUR FIRST MEETING AND I TOLD YOU TIME IN
20 COURT IS VERY DIFFERENT THAN REAL TIME IN THE REAL WORLD. AND
21 OTHER THINGS COME UP, AS YOU KNOW. I HAVE ANOTHER CASE THIS
22 AFTERNOON THAT IS GOING TO OCCUPY SOME TIME, AND SO WE CAN'T
23 MEET THIS AFTERNOON.

24 BUT I DO NEED TO SPEAK WITH THE LAWYERS SOME MORE AND GET
25 THEIR ASSISTANCE ON SOMETHING. SO LET'S RECESS NOW AT 11:00

1 O'CLOCK. I APOLOGIZE FOR ANY INCONVENIENCE.

2 IN TALKING WITH MY LAW CLERKS, AND IT SEEMS LIKE WE'VE
3 BEEN ABLE TO GET SOME THINGS OFF OF OUR CALENDAR FOR TOMORROW
4 MORNING. I THINK WE JUST HAVE MAYBE TWO THINGS ON AT 9:00, AND
5 I'M QUITE CONFIDENT THAT THE LAWYERS WILL HEED MY SUGGESTIONS
6 FOR BREVITY SUCH THAT WE CAN HAVE YOU BACK HERE AT 10:30, 10:30
7 TOMORROW MORNING.

8 SO IF YOU WOULD BE IN RECESS, I REMIND YOU OF THE
9 ADMONITION AND IT'S STILL IN PLACE, AND WE'LL SEE YOU TOMORROW
10 MORNING AT 10:30.

11 THANK YOU VERY MUCH.

12 (JURY OUT AT 11:01 A.M.)

13 THE COURT: ALL RIGHT. THE RECORD SHOULD REFLECT
14 THAT THE JURY HAS LEFT FOR THE DAY. I'M GOING TO RECONVENE
15 WITH THE JURY TOMORROW AT 10:30.

16 LET'S TAKE A TEN MINUTE BREAK NOW AND CONTINUE WITH OUR
17 CONVERSATION.

18 IF YOU COULD CHECK, MS. SISKIND, ONE OF YOU COULD CHECK
19 ABOUT THIS TRANSCRIPT ISSUE DURING THIS BREAK, THAT WOULD BE
20 HELPFUL.

21 MS. SISKIND: YES, WE WILL.

22 THE COURT: GREAT. THANKS.

23 (RECESS FROM 11:02 A.M. UNTIL 11:30 A.M.)

24 THE COURT: SO LET'S GO ON THE RECORD. WE'RE BACK
25 ON THE RECORD IN THE DESAI MATTER. OUR JURY IS GONE AND THE

1 WITNESS IS GONE AND ALL COUNSEL AND THE DEFENDANT ARE PRESENT.

2 WE'RE OUTSIDE OF THE PRESENCE OF THE JURY. AN ISSUE HAS
3 COME UP REGARDING AN EXHIBIT, SUMMARY EXHIBITS.

4 MR. SCHAINBAUM: LET ME JUST MAKE AN OBJECTION AT
5 THE OUTSET BEFORE WE GO THROUGH EACH OF THESE DOCUMENTS.

6 THE COURT: LET ME IDENTIFY THE DOCUMENTS WE'RE
7 SPEAKING ABOUT. 143 TO 153.

8 MR. SCHAINBAUM: ALL RIGHT. I OBJECT TO THESE
9 DOCUMENTS BECAUSE I BELIEVE THE I.R.S. HAS BEEN ABLE TO LOCATE
10 ALL OF THE TRANSCRIPTS FOR THE YEARS THAT ARE RELEVANT AND THE
11 YEARS THAT WE'RE GOING TO BE DISCUSSING, 2003 THROUGH 2009.

12 I BELIEVE THAT IN FAIRNESS THE TRANSCRIPTS CONTAIN A
13 COMPLETE DESCRIPTION AND HISTORY OF THE TAXPAYER'S TRANSACTIONS
14 FOR EACH YEARS SEPARATELY.

15 THE NOTICES THAT WE'RE ABOUT TO DISCUSS ARE NOTICES THAT
16 ARE ALREADY INCLUDED ON THE TRANSACTION OR ON THE TRANSCRIPTS
17 IN A CONCLUSORY MANNER.

18 THE COURT: ALL RIGHT.

19 MR. SCHAINBAUM: SO I OBJECT TO ALL OF THESE
20 EXHIBITS FOR THAT PURPOSE, BUT WE CAN GO THROUGH THE
21 DISCUSSION.

22 THE COURT: THANK YOU. YOUR OBJECTIONS ARE NOTED.

23 LET ME ASK MS. SISKIND FIRST OF ALL IF YOU COULD JUST
24 INDICATE WHAT 143 TO 153 ARE, AND WHY YOU'RE SEEKING TO USE
25 THEM, AND WHETHER YOU'RE SEEKING TO INTRODUCE THEM INTO

1 EVIDENCE AND THE PURPOSE OF IT, IF YOU CAN DO THAT.

2 MS. SISKIND: YOUR HONOR, MAY I SIT WHILE I DO THIS?

3 THE COURT: PLEASE, PLEASE.

4 MS. SISKIND: EXHIBITS 143 THROUGH 153 ARE NOTICES
5 THAT THE DEFENDANT RECEIVED FROM THE I.R.S. AS PART OF WHAT
6 MR. OERTEL TESTIFIED WERE CORRESPONDENCE AUDITS FOR THE YEARS
7 2003 THROUGH 2008.

8 THE NOTICES START THE FIRST ONE BEING MARCH 28TH, 2005,
9 AND THEY GO ALL OF THE WAY UP UNTIL THE LAST ONE SEPTEMBER 7TH,
10 2010.

11 THE GOVERNMENT IS SEEKING TO ADMIT THESE DOCUMENTS INTO
12 EVIDENCE AT TRIAL SO THAT THE JURY CAN SEE THE DATES OF THE
13 NOTICES AND THE SUBJECT MATTER OF THE CORRESPONDENCE AUDITS,
14 WHICH IS INTEREST INCOME THAT ACCORDING TO THE I.R.S. THE
15 DEFENDANT DID NOT INCLUDE ON THE APPROPRIATE TAX RETURNS.

16 GIVEN THE TIMING OF THESE NOTICES AND THAT THE TIMING
17 OVERLAPS WITH THE FACTS IN THIS CASE, INCLUDING THE DEFENDANT'S
18 MANAGEMENT OF HIS AND HIS FAMILY'S FOREIGN ACCOUNTS AND THE
19 FILING OF THE TAX RETURNS CHARGED IN THE INDICTMENT, THE
20 GOVERNMENT IS GOING TO ARGUE THAT USING THESE NOTICES THAT THE
21 DEFENDANT WAS ON NOTICE FROM THE I.R.S. THROUGHOUT THE RELEVANT
22 TIME PERIOD OF HIS LEGAL DUTY TO REPORT INTEREST INCOME ON HIS
23 TAX RETURNS.

24 THE COURT: AND, MR. SCHAINBAUM, YOUR OBJECTION?

25 MR. SCHAINBAUM: I OBJECT TO THESE NOTICES BECAUSE

1 THEY CONTAIN A LOT OF INFORMATION INDIVIDUALLY AND DO NOT IN
2 AND OF ITSELF, EACH EXHIBIT, COME TO A CONCLUSION.

3 THE CONCLUSION AS TO WHAT HAPPENS AFTER THESE NOTICES WERE
4 ISSUED ARE ON THE TRANSCRIPT. THERE'S A COMPLETE HISTORY OF
5 EACH TAX YEAR AND THE RESULTS, AND I THINK IN ALL FAIRNESS
6 THAT'S ALL THAT IS NECESSARY.

7 AND THE GOVERNMENT IS FREE TO ARGUE FROM THE CODES
8 CONTAINED ON THE TRANSCRIPTS AND THE DESCRIPTIONS WHAT THEY
9 WANT ABOUT INTEREST INCOME BEING REPORTED OR NOT BEING REPORTED
10 OR BEING UNDERREPORTED.

11 SO I BELIEVE THIS IS UNNECESSARY, AND I BELIEVE IT'S MORE
12 IN TERMS OF AN AVALANCHE OF DOCUMENTS IN A 404(B) PROBLEM AREA.

13 AND BY REDACTING CERTAIN INFORMATION, THE JURY IS GOING TO
14 WONDER WHAT HAPPENED? WHY IS THAT REDACTED? AND THE
15 TRANSCRIPT, GETTING IT INTO EVIDENCE, WILL ALLEVIATE PART OF
16 THE PROBLEM BUT NOT ALL OF IT BECAUSE THEY'RE STILL GOING TO
17 SEE THAT THERE'S SOMETHING ELSE THERE, AND THEY'RE GOING TO
18 WONDER WHAT IT IS.

19 SO THAT'S MY OBJECTION. MY OBJECTION IS THAT IT'S AN
20 AVALANCHE OF DOCUMENTS THAT ARE HIGHLY PREJUDICIAL AND
21 UNNECESSARY IF YOU HAVE THE TRANSCRIPTS, AND WE DO NOW HAVE THE
22 TRANSCRIPTS.

23 THE COURT: ALL RIGHT. THANK YOU. I DO NOTE, AND
24 IT WAS NOTED EARLIER, I BELIEVE, THAT THE DEFENSE INTRODUCED K,
25 L, AND M, WHICH WERE AUDITS, THE TRANSCRIPTS, I THINK.

1 MR. SCHAINBAUM: AND THEY'RE NOT -- THEY'RE
2 TRANSCRIPTS, WHICH REFLECT WHAT HAPPENED DURING 2007, 2008, AND
3 2009, INCLUDING ANY AUDIT, IF ANY, AND SO THAT IS IN THE
4 RECORD. THAT'S WHAT MY GENESIS OR THE BASIS FOR MY OBJECTION.

5 WE ALREADY HAVE K, L, AND M IN THE RECORD, AND IF WE PUT
6 THE OTHER TRANSCRIPTS IN THE RECORD, WHICH I BELIEVE GO WAY
7 OUTSIDE THE TAX YEARS THAT ARE CHARGED, BUT NEVERTHELESS IF WE
8 PUT THEM IN, WE'LL SHOW WHAT HAPPENED IN EACH YEAR.

9 AND, YOU KNOW, AND I THINK THAT'S A FAIR UNDERSTANDING FOR
10 THE JURY AND IT GIVES THE GOVERNMENT LEEWAY TO ARGUE WHATEVER
11 THEY WANT.

12 THE COURT: OKAY. ALL RIGHT. THANK YOU. SO THE
13 GOVERNMENT HAS THE BURDEN OF PROVING WILLFULNESS AND THEY CAN
14 PROVE, BY USE OF TAXPAYER'S HISTORY AND CONDUCT WITH HIS OR HER
15 TAX OBLIGATIONS, EVIDENCE OF THEIR CONDUCT AND THOSE
16 OBLIGATIONS TO THAT END AT PROVING WILLFULNESS.

17 NOW, WHEN I LOOK AT THESE EXHIBITS, I LOOKED AT 143 AND IT
18 DOES SEEM TO BE -- IT IS A LETTER FROM THE INTERNAL REVENUE
19 SERVICE TO MR. DESAI, HE AND HIS WIFE, AND IT'S ADDRESSED TO
20 HIM.

21 STARTING AT PAGE 5 OF 143, I DO NOTE -- I BELIEVE IT RUNS
22 TO PAGE 13, AND IT HAS 40 ITEMS THAT THE I.R.S. IDENTIFIED WITH
23 INTEREST ISSUES. AND I BELIEVE ITEM 15 BEGINS SCHEDULE
24 D/CAPITAL GAINS DIVIDENDS, BUT INTEREST ISSUES ARE WHAT IS AT
25 ISSUE IN THIS TRIAL.

1 THERE ARE A LIST OF VARIOUS BANKING INSTITUTIONS, BANK OF
2 AMERICA, UNITED COMMERCIAL BANK, CITIGROUP, NUVEEN, CALIFORNIA,
3 AND OTHER BANKS.

4 WHEN I LOOKED AT THESE, MY INITIAL THOUGHT ON 143 WAS THAT
5 TO ALLOW A JURY TO SEE THIS ENTIRE, THE ENORMITY OF THESE
6 DOCUMENTS, THE 40 ITEMS, RAISE SOME 404(B) CONCERNS. AND I
7 DON'T WANT THE JURY TO MAKE A DECISION HERE BASED ON CONDUCT
8 OUTSIDE OF THE CHARGING DOCUMENTS AND MAKE A DECISION BECAUSE
9 THEY HAD SOME FEELING ABOUT THE DEFENDANT AND HIS ALLEGED
10 INTEREST REPORTING ON OTHER ACCOUNTS NOT CHARGED HERE.

11 WE HAVE TALKED ABOUT, PERHAPS, REDACTING SOME OF THESE.

12 MR. SCHAINBAUM, I HAD INDICATED EARLIER ABOUT REDACTING IN
13 THE COLUMNS RECEIVED FROM, ACCOUNT INFORMATION, AMOUNT REPORTED
14 TO I.R.S. BY OTHERS, REDACTING ALL OF THAT INFORMATION IN THOSE
15 BOXES AND JUST LEAVING THE ITEM NUMBER AND THE ISSUE IDENTIFIED
16 AS INTEREST.

17 AND I'D LIKE YOUR THOUGHTS ON THAT, PLEASE.

18 MR. SCHAINBAUM: YOUR HONOR, IF I UNDERSTAND YOU
19 CORRECTLY, YOU WANT TO REDACT NOT THE NAME OF THE BANK, WHICH
20 IS RECEIVED FROM, AND YOU DON'T WANT TO REDACT THE ISSUE COLUMN
21 WHICH IDENTIFIES INTEREST AS THE ITEM THAT IS BEING LOOKED
22 AT --

23 THE COURT: I GUESS WHAT I'M SAYING -- PARDON ME FOR
24 INTERRUPTING. I GUESS WHAT I'M SAYING JUST TO START WITH, THIS
25 IS MY QUESTION TO YOU, IF THE REAL INTEREST IN THIS DOCUMENT

1 IS -- A POOR CHOICE OF WORDS -- IF THE VALUE, I SUPPOSE, OF
2 THIS DOCUMENT FROM THE GOVERNMENT'S PERSPECTIVE IS TO SHOW
3 SCIENTER OF AN INTEREST ISSUE WITH THE I.R.S. AND YOUR CLIENT,
4 RECOGNIZING THAT, IT IS POSSIBLE TO REDACT EVERY BOX TO THE
5 RIGHT OF THE ISSUE BOX SO THAT IT JUST HAS ISSUE: INTEREST.

6 MR. SCHAINBAUM: YEAH, BUT THAT DOES NOT COMPORT
7 WITH OUR DEFENSE. DID HE LACK WILLFULNESS? AND WITHOUT TRYING
8 TO GO INTO TOO MUCH WHAT THE DEFENSE IS THINKING IS, I'LL JUST
9 POINT OUT TO I'M LOOKING AT PAGE 7 OF 18 OF THE 143. JUST ON
10 THAT PAGE.

11 YOU TAKE THE ITEM NUMBER 10 IN THE BOX CALLED THE AMOUNT
12 REPORTED TO THE I.R.S. BY OTHERS: \$12. AMOUNT INCLUDED ON
13 RETURN: \$12.

14 IF YOU WANT TO TALK WILLFULNESS, WE'RE TALKING LACK OF
15 WILLFULNESS.

16 WHAT IS THE NEXT ITEM CITIGROUP. AMOUNT REPORTED TO
17 I.R.S. BY OTHERS: 9500. AMOUNT INCLUDED ON YOUR RETURN: 9500.

18 OKAY. THEN THE NEXT ONE IS AMOUNT REPORTED TO I.R.S.:
19 553. ZERO ON HIS RETURN.

20 NEXT ONE. \$1,052 REPORTED TO I.R.S. BY OTHERS. AMOUNT
21 INCLUDED ON YOUR RETURN: 1,052. SO THIS IS A MIXED BAG.

22 THE COURT: SO WE SHOULD LEAVE THOSE IN THERE? SO
23 YOU'D LIKE THOSE LEFT IN?

24 MR. SCHAINBAUM: RIGHT. I THINK IT SHOWS --

25 THE COURT: I GET IT.

1 MR. SCHAINBAUM: YOU'VE GOT IT.

2 THE COURT: AND THEN THE NEXT QUESTION IS SHOULD
3 THESE -- SHOULD ALL 40 ITEMS BE PRESENTED TO THE JURY. AND, IF
4 NOT, WHERE SHOULD THIS STOP?

5 NOW, MS. SISKIND PREVIOUSLY INDICATED THAT A PAGE --

6 MS. SISKIND: PAGE 8. IT SWITCHES OVER FROM
7 INTEREST TO A DIFFERENT TYPE OF INCOME.

8 THE COURT: YES. THERE ARE 14 INTEREST ITEMS IN
9 THIS LETTER. IF WE INCLUDE 14, WHICH I ASSUME YOU WOULD WANT
10 TO INCLUDE BECAUSE THAT DOES SHOW THAT AMOUNT REPORTED BY BOTH
11 PARTIES, THE BANK AND YOUR CLIENT, ARE THE SAME AND SO THERE'S
12 A ZERO DIFFERENCE.

13 MS. SISKIND: I WOULD POINT OUT JUST FOR THE RECORD,
14 YOUR HONOR, THE DEFENSE IS GOING TO PUT IN TRANSCRIPTS THAT
15 TALK ABOUT AN AUDIT AS A SINGULAR UNIT. IT MAY BE MISLEADING
16 TO REDACT PARTS OF IT. I'M JUST PUTTING THAT OUT THERE THAT --

17 THE COURT: THAT'S A GOOD THOUGHT IS THAT IF WE HAVE
18 A WITNESS ON THE STAND WHO I PRESUME HAS THE CAPABILITIES AND
19 BACKGROUND AND KNOWLEDGE TO TESTIFY ABOUT THE CODES.

20 MS. SISKIND: YES.

21 THE COURT: AND SOME OF THOSE CODES, I'M SURE,
22 RELATE TO THE INTEREST, UNDERPAID, UNREPORTED, WHATEVER IT IS,
23 AND SOME OF THOSE CODES MAY ALSO RELATE TO SCHEDULE D/CAPITAL
24 GAINS DIVIDENDS.

25 MS. SISKIND: WELL, I THINK THE CODE ACTUALLY

1 RELATES JUST THE AUDIT AS A WHOLE. THE TWO THINGS THAT THE 290
2 TALKS ABOUT IS ADDITIONAL TAX ASSESSED BY EXAMINATION, WHICH
3 REFERS TO THE BOTTOM LINE FIGURE THAT COMES OUT OF THIS WHOLE
4 EXERCISE, DIVIDENDS, INTEREST AND ALL.

5 I'LL DEFER TO THE COURT ON WHAT TO DO WITH THE DIVIDENDS
6 AND CAPITAL GAINS BUT CERTAINLY THE TRANSCRIPT TALKS ABOUT THE
7 AUDIT AS A UNIT. IT DOESN'T JUST TALK ABOUT THE AUDIT IN
8 PIECES.

9 MR. SCHAINBAUM: I GO BACK TO MY ORIGINAL OBJECTION
10 TO THE ENTIRE DOCUMENT, AND I MAINTAIN THAT.

11 BUT IF YOU'RE GOING TO TRY TO PUT THIS IN WITH THE
12 TRANSCRIPT THAT IS ALREADY IN THE RECORD, AND IF THE ISSUE HERE
13 IS INTEREST, UNDERREPORTED OR UNREPORTED, THAT'S THE ISSUE.

14 SO I THINK THAT THE ARGUMENT HERE IS THAT THEY'RE TRYING
15 TO SHOW THROUGH THIS CALCULATION HERE THAT HE'S GOT UNREPORTED
16 INTEREST. I THINK YOU NEED TO LEAVE ALL OF THE INTEREST IN,
17 AND I THINK YOU NEED TO CONFINE IT TO THAT SUBJECT.

18 THIS OTHER SUBJECT CUTS BOTH WAYS, BUT I'M NOT GOING TO GO
19 INTO IT.

20 THE COURT: OKAY.

21 MR. SCHAINBAUM: BUT I THINK, TO USE MS. SISKIND'S
22 TERM FROM THE FEDERAL RULES OF EVIDENCE, "IT'S NOT RELEVANT."

23 MS. SISKIND: AND I DON'T NECESSARILY HAVE A STRONG
24 FEELING EITHER WAY ON THE DIVIDENDS AND CAPITAL GAINS ISSUE. I
25 JUST WANT TO POINT OUT THAT WHEN THE JURY SEES THE TRANSCRIPT,

1 THEY'RE GOING TO SEE A REFERENCE TO A BOTTOM LINE NUMBER THAT
2 COMES FROM THE AUDIT AS A WHOLE.

3 MR. SCHAINBAUM: AND THEY'RE GOING TO SEE A LINE
4 ITEM REFLECTING WHAT THE AUDIT RESULTS WERE.

5 THE COURT: SO WHEN I LOOK AT 143, PAGE 8, BELOW
6 ITEM 14 THERE'S AN INTEREST TOTAL NUMBER WITH A DIFFERENCE,
7 \$553 IS THE DIFFERENCE.

8 GOING DOWN THE FORM, THE NEXT TOTAL IS SCHEDULE D/CAPITAL
9 GAIN DIVIDENDS; THEN THERE'S A TAXABLE DIVIDENDS TOTAL; AND
10 THEN THERE'S STATE INCOME TAX REFUND, WHICH I DON'T THINK HAS
11 ANY RELEVANCE HERE.

12 I COULD AND I AM INCLINED TO ALLOW 143 TO COME IN. NOW,
13 THIS IS ALSO CONTINGENT ON THE TRANSCRIPTS -- IS THAT WHAT
14 THEY'RE CALLED, TRANSCRIPTS?

15 MS. SISKIND: YES.

16 THE COURT: THOSE ALSO CAN BE ADMITTED. I DON'T
17 KNOW WHO IS GOING TO ADMIT THOSE.

18 MS. SISKIND: I THINK THE DEFENSE IS GOING TO DO
19 THAT ON CROSS-EXAMINATION.

20 THE COURT: IS THAT WHAT YOU WOULD LIKE TO DO
21 MR. SISKIND.

22 MS. SISKIND: I'M MS. SISKIND.

23 THE COURT: I'M SORRY.

24 MR. SCHAINBAUM: DON'T YOU HAVE A MURDER HEARING
25 THIS AFTERNOON?

1 THE COURT: YES.

2 MR. SCHAINBAUM: I'M LEAVING THE COURTHOUSE.

3 I DON'T CARE, BUT I THINK IN ALL FAIRNESS THE GOVERNMENT
4 HAS GOT THEIR I.R.S. WITNESS UP THERE, THEY SHOULD SUBMIT IT.
5 BUT IF THEY WANT TO LEAVE IT TO US, WE'LL DO IT.

6 THE COURT: SOMEHOW THEY'RE GOING TO GET IN.

7 MR. SCHAINBAUM: THAT'S A GOOD ANSWER, YES.

8 THE COURT: SO ON 143 WHAT I'LL DO, MR. SCHAINBAUM,
9 IS WE'LL REDACT, MS. SISKIND, EVERYTHING BELOW ON PAGE 8 BELOW
10 THE INTEREST TOTAL BOX AND THAT WILL COME OUT. AND THIS IS,
11 AGAIN, CONTINGENT ON SOMEONE INTRODUCING THE TRANSCRIPTS.

12 LET'S MOVE TO 144.

13 MS. SISKIND: JUST TO BE CLEAR, YOUR HONOR, ALSO
14 REDACTING PAGES 9, 10, 11, 12, AND 13?

15 THE COURT: THAT'S RIGHT.

16 MS. SISKIND: SO ALL OF THAT.

17 THE COURT: THAT'S RIGHT.

18 MS. SISKIND: IS THERE ANYTHING THAT THE COURT NEEDS
19 US TO REDACT ON PAGE 17?

20 TO CLARIFY, THE SECTION ON THE CHART ABOUT INTEREST, WE
21 CAN LEAVE ALL OF THE COLUMNS IN ON THAT PART OF THE CHART?

22 THE COURT: YES.

23 MS. SISKIND: OKAY.

24 MR. SCHAINBAUM: I DIDN'T HEAR.

25 THE COURT: MR. SCHAINBAUM, ALL OF THE COLUMNS IN

1 REGARDS TO INTEREST WILL REMAIN WITH THE BANKS, THE ACCOUNT
2 NUMBERS, AND THE AMOUNT REPORTED.

3 MR. SCHAINBAUM: YES.

4 THE COURT: OKAY. NOW WE'RE MOVING TO -- SO WE'RE
5 GOING TO REDACT ALL OF THE OTHER BOXES, WHICH INCLUDES 40,
6 WHICH BRINGS US TO PAGE 13, I THINK IT IS.

7 MS. SISKIND: YES, YOUR HONOR.

8 THE COURT: AND THEN PAGE 14. MR. SCHAINBAUM, THAT
9 WILL REMAIN.

10 PAGE 15 WILL REMAIN. WHEN I SAY, "REMAIN," THAT MEANS
11 UNREDACTED.

12 16.

13 PAGE 17, MR. SCHAINBAUM? ARE THERE ANY CHANGES THAT
14 SHOULD TAKE PLACE ON THAT?

15 MS. SISKIND, MAYBE YOU WANT TO START THIS CONVERSATION?

16 MS. SISKIND: I SUPPOSE NOW THIS IS TOTALLING UP
17 THINGS THAT HAVE BEEN REDACTED ALONG WITH THINGS THAT ARE
18 UNREDACTED?

19 THE COURT: WELL, THAT'S WHAT THIS SHOWS, THIS SHOWS
20 THE CUMULATIVE TOTAL.

21 MS. SISKIND: RIGHT. WE COULD REDACT THIS PAGE,
22 EITHER PARTS OR IN ITS ENTIRETY.

23 THE COURT: SO IF WE KEEP THIS CONSISTENT WITH JUST
24 THE INTEREST, THE SCHEDULE D/CAPITAL GAINS DIVIDENDS WOULD GO,
25 THE STATE INCOME TAX REFUND WOULD GO, THE TAXABLE DIVIDENDS

1 COLUMN WOULD GO, QUALIFIED DIVIDENDS AND POST-MAY 5 CAPITAL
2 GAINS WOULD GO.

3 I THINK -- IS THERE GOING TO BE A PROBLEM WITH THE NEXT
4 BOX, CHANGES TO YOUR TAX COMPUTATION, BECAUSE THAT PROBABLY
5 CAPTURES ALL OF THE OTHER ITEMS THAT WE JUST REDACTED.

6 MR. SCHAINBAUM: I THINK, YOUR HONOR, YOU CAN REDACT
7 THE WHOLE PAGE IF YOU GO THIS WAY BECAUSE THE BOTTOM LINE TOTAL
8 AMOUNT THAT YOU OWE IS GOING TO APPEAR ON THE TRANSCRIPT.

9 THE COURT: I'M SORRY?

10 MR. SCHAINBAUM: THE BOTTOM LINE, THE LAST LINE OF
11 THE GRID SUMMARY OF PROPOSED CHANGES --

12 THE COURT: YES.

13 MR. SCHAINBAUM: -- TOTAL AMOUNT THAT YOU OWE, THAT
14 NUMBER WOULD APPEAR ON THE TRANSCRIPT OR MODIFIED NUMBER,
15 DEPENDING ON HOW THE TAXPAYER RESPONDED.

16 I DON'T HAVE THE TRANSCRIPT IN FRONT OF ME. SO IF I HAD
17 IT, I COULD EXPLAIN IT BETTER.

18 MS. SISKIND: I THINK WE CAN JUST REDACT THIS WHOLE
19 PAGE.

20 THE COURT: ALL RIGHT. MR. SCHAINBAUM, MS. SISKIND
21 AGREES WITH YOU.

22 MS. SISKIND: IT WILL JUST BE EASIER.

23 THE COURT: ALL RIGHT. WE'LL REDACT THAT PAGE.
24 PAGE 18 THEN IS NOT NEEDED.

25 MS. SISKIND: INTENTIONALLY LEFT BLANK I THINK IT

1 SAYS.

2 MR. SCHAINBAUM: THAT'S WILLFULNESS.

3 THE COURT: LET'S GO TO 144 THEN.

4 LET ME JUST START, PAGE 1, PAGE 2, PAGE 3, PAGE 4 -- PAGE
5 5 BEGINS THE GRID AGAIN. AND I DON'T SEE INTEREST IN HERE.

6 MS. SISKIND: AND I THINK THAT'S BECAUSE 143 IS AN
7 UPDATE TO 144. IT'S THE SAME TAX YEAR. IT STILL RELATES TO
8 INTEREST, WHICH YOU CAN TELL BY LOOKING AT PAGE 14.

9 BUT WHAT MR. OERTEL WILL EXPLAIN IS THAT THE TAXPAYER WILL
10 GET ONE AND HAS A CHANCE TO RESPOND, AND THEN THIS IS THE NEW
11 NOTICE THAT THEY GET AFTER THEY HAVE HAD A CHANCE TO RESPOND,
12 BUT IT STILL RELATES TO INTEREST INCOME AS YOU CAN SEE FROM
13 PAGE 14.

14 THE COURT: THE ITEMS IN THE BOXES ARE ALL RELATED
15 TO CAPITAL GAINS DIVIDENDS, AND IT SEEMS LIKE, TO BE
16 CONSISTENT, THOSE NEED TO BE REDACTED. I DON'T KNOW WHAT THE
17 VALUE OF THIS EXHIBIT IS.

18 MS. SISKIND: THE VALUE IS THAT IT RELATES TO THE
19 SAME AUDIT AND STILL RELATES TO INTEREST INCOME BECAUSE IF YOUR
20 HONOR LOOKS ON PAGE 14 ON THAT CHART, INTEREST INCOME IS STILL
21 THE SUBJECT OF THIS AUDIT EVEN IF THERE ARE NOT INTEREST ITEMS
22 ENUMERATED IN THE VARIOUS CHARTS.

23 MR. SCHAINBAUM: AND IN ALL FAIRNESS, THIS SAYS
24 REPORTED TO I.R.S. OR CORRECTED AND THE DIFFERENCE IS \$553.

25 THE COURT: SO ARE YOU SUGGESTING THAT THAT COLUMN

1 SHOULD REMAIN, MR. SCHAINBAUM?

2 MR. SCHAINBAUM: I STILL THINK IT WILL REFLECT ON
3 THE TRANSCRIPT. I DON'T KNOW, MAYBE MR. HELGESEN HAS THE
4 TRANSCRIPT FOR 2003. THANK YOU.

5 THE COURT: MS. SISKIND, DO YOU HAVE A THOUGHT ON
6 WHAT SHOULD REMAIN ON PAGE 14?

7 MS. SISKIND: THE LINE -- THE HEADING CHANGES TO
8 YOUR INCOME AND DEDUCTION SHOWN ON RETURN AND SO ON, REDACT THE
9 FIRST TWO LINES, LEAVE INTEREST, AND REDACT THE REST.

10 THE COURT: I THINK THAT WAS MY OBSERVATION,
11 MR. SCHAINBAUM.

12 MR. SCHAINBAUM: WELL, TO BE CONSISTENT WITH THE
13 OTHER EXHIBIT, YOU REDACTED THE WHOLE PAGE.

14 THE COURT: I DID, BUT THIS -- WE'RE REDACTING ALL
15 OF THE DIVIDENDS ON THIS. SO THERE'S NO BOXES, IF YOU WILL,
16 BUT WHAT THIS WOULD SHOW IS A CONTINUATION OF THE INTEREST
17 CALCULATION.

18 MR. SCHAINBAUM: AND LEAVE THAT?

19 THE COURT: YES, JUST LEAVE THAT, WHICH I THINK
20 WOULD ALLOW YOU TO EXPLAIN INTEREST CARRY-OVER, ALLOW
21 MS. SISKIND TO EXPLAIN THIS IS A CARRY-OVER FROM THE PREVIOUS
22 YEAR, AND IT CONTINUES THE CONVERSATION ABOUT INTEREST ONLY.

23 MS. SISKIND: THIS IS THE SAME YEAR, YOUR HONOR.
24 IT'S THE SAME YEAR.

25 THE COURT: BUT IT'S AFTER HIS RECALCULATION, IS

1 THAT WHAT IT IS?

2 MS. SISKIND: YES.

3 MR. SCHAINBAUM: WELL, YOU GET THE NOTICE AND THEN
4 YOU RESPOND TO THE NOTICE, AND THEN AS A RESULT OF THAT
5 RESPONSE, THIS IS THE CONCLUSION.

6 THE COURT: SO IT JUST CARRIES OVER THAT RESULT.
7 WE'RE ONLY INTERESTED IN THE INTEREST PART, CONCERNED WITH THE
8 INTEREST PART. SO WE'LL LEAVE INTEREST IN THIS THEN, AS YOU
9 SUGGEST, MS. SISKIND.

10 MS. SISKIND: RIGHT.

11 THE COURT: EVERYTHING ELSE WILL GO AWAY.

12 145.

13 MR. SCHAINBAUM: WELL, LET'S GO BACK TO THIS BEFORE
14 WE GO OFF.

15 THE COURT: YES.

16 MR. SCHAINBAUM: I HAVE THE TRANSCRIPT IN FRONT OF
17 ME AND IN ORDER TO REALLY DO A PROPER LACK OF WILLFULNESS
18 ARGUMENT, IF YOU'RE GOING TO USE THIS FOR WILLFULNESS, ON THE
19 LAST PAGE, PAGE 2 OF THE TRANSCRIPT UNDER CODE 640, YOU HAVE
20 GOT ADVANCED PAYMENT OF TAX OWED 06 --

21 THE COURT: WOULD YOU REPEAT YOURSELF.

22 MR. SCHAINBAUM: 06-29-2005. NEXT IS A MINUS SIGN
23 \$5,269. THAT'S THE EXACT NUMBER TO WHAT IS ON THIS LAST PAGE.

24 SO IF YOU WANT TO REDACT EVERYTHING EXCEPT INTEREST AND
25 THAT LAST LINE, WE CAN CORRELATE IT TO THIS TRANSCRIPT FOR

1 2003.

2 THE COURT: THE LAST LINE MEANING THE SUMMARY OF
3 PROPOSED CHANGES ON PAGE 14?

4 MR. SCHAINBAUM: CORRECT. TOTAL AMOUNT YOU OWE
5 SHOWS UP AS A PAYMENT AND IT'S CHARACTERIZED BY CODE 640 ON THE
6 TRANSCRIPT. ADVANCED PAYMENT OF TAX OWED.

7 THE COURT: OKAY.

8 MR. SCHAINBAUM: AND IT GIVES ME AN ARGUMENT FOR
9 LACK OF WILLFULNESS.

10 THE COURT: SO, MR. SCHAINBAUM, ARE YOU SUGGESTING
11 THAT THAT ENTIRE BOX THAT IS ENTITLED SUMMARY OF PROPOSED
12 CHANGES REMAIN?

13 MR. SCHAINBAUM: YES, I AM.

14 THE COURT: MS. SISKIND?

15 MS. SISKIND: THAT'S FINE.

16 MR. SCHAINBAUM: THANK YOU, YOUR HONOR.

17 THE COURT: YOU'RE WELCOME. TURNING TO 145
18 MS. SISKIND, SHOULD PAGE 1 REMAIN AS PRINTED?

19 MS. SISKIND: YES.

20 THE COURT: PAGE 2. PAGE 3 OF 15 IS A BLANK PAGE.
21 PAGE 4 OF 15. PAGE 5.

22 HERE ON PAGE 6 THERE'S ONE ITEM OF INTEREST. IT'S THE
23 FIRST ITEM. EVERYTHING ELSE LOOKS LIKE IT'S SCHEDULE D/CAPITAL
24 GAIN DIVIDENDS AND TAXABLE DIVIDENDS.

25 CONSISTENT WITH WHAT WE HAVE DONE, SHOULD EVERYTHING BE

1 REDACTED EXCEPT ITEM 1, INTEREST?

2 MS. SISKIND: YES, YOUR HONOR.

3 THE COURT: MR. SCHAINBAUM?

4 MR. SCHAINBAUM: OVER MY OBJECTION, YES. I MEAN, I
5 HAVE OBJECTED TO ALL OF THESE ITEMS THAT WE'RE GOING THROUGH
6 EXCEPT FOR THE TRANSCRIPTS.

7 THE COURT: OKAY.

8 MR. SCHAINBAUM: I JUST WANT TO MAKE IT FOR THE
9 RECORD.

10 THE COURT: THAT'S FINE. THAT'S FINE.

11 SO ITEM 2 WILL BE REDACTED FROM PAGE 6.

12 THEN ALL OF THE OTHER ITEMS ON PAGE 7 ARE REDACTED.

13 PAGE 8, THAT ITEM IS REDACTED.

14 PAGE 9 IS BLANK. IT'S 9 OF 15, BUT IT'S TITLED PAGE 7.

15 PAGE 10 OF 15 WILL REMAIN.

16 PAGE 11 OF 15 WILL REMAIN.

17 ANY OBJECTION OF THAT? I'M LOOKING AT 11 OF 15, OTHER
18 REDUCTIONS HAS SOME NUMBERS IN IT.

19 MS. SISKIND: I DON'T THINK THOSE ARE NUMBERS
20 RELATED TO SPECIFICALLY --

21 THE COURT: TO THE INTEREST ISSUE.

22 MS. SISKIND: WELL, TO THE DEFENDANT -- I THINK
23 THEY'RE NUMBERS PROVIDED BY THE I.R.S. FOR THE CUTOFF FROM WHEN
24 YOUR ADJUSTED GROSS INCOME GETS ABOVE A CERTAIN AMOUNT. IT'S
25 NOT SPECIFIC TO THIS DEFENDANT.

1 THE COURT: OKAY. PAGE 12 WILL REMAIN.

2 PAGE 13 WILL REMAIN.

3 PAGE 14 HAS THE BOX REGARDING CHANGES.

4 MR. SCHAINBAUM: THE SAME ANALYSIS, YOUR HONOR.

5 OVER MY OBJECTION THE INTEREST IS WHAT THE GOVERNMENT IS AFTER.

6 THE COURT: SO WE SHOULD REDACT EVERYTHING BUT THE
7 INTEREST?

8 MR. SCHAINBAUM: AND THE LAST GRID, WHICH INDICATES
9 AMOUNT OF TAX INCREASE, THE ACCURACY RELATED PENALTY, INTEREST,
10 AND THE TOTAL AMOUNT YOU OWE.

11 MS. SISKIND: WE'LL LEAVE THE WHOLE CHART THAT IS
12 CALLED SUMMARY OF PROPOSED CHANGES, AND WE'LL ALSO LEAVE THE
13 INTEREST LINE IN THE CHANGES CHART.

14 THE COURT: RIGHT. ARE YOU WITH US THERE?

15 MR. SCHAINBAUM: YES.

16 THE COURT: OKAY. ALL RIGHT. PAGE 15 OF 15 --

17 MR. SCHAINBAUM: WHEN I SAY "YES, ALL RIGHT," IT'S
18 IN RELATION TO MY CONTINUING OBJECTION.

19 THE COURT: OKAY. SO NOTED.

20 MR. SCHAINBAUM: BUT I'M WITH IT.

21 THE COURT: PAGE 15 OF 15 IS BLANK. I DON'T KNOW IF
22 THAT'S NEEDED.

23 THEN WHAT I HAVE NEXT IS PAGE 1 OF 12 OF THE SAME EXHIBIT.

24 MS. SISKIND: 146 SHOULD BE THE NEXT EXHIBIT.

25 THE COURT: YOU KNOW WHAT, A TAB IS MISSING. THAT'S

1 RIGHT. 146 IS MAY 29, 2007.

2 MS. SISKIND: CORRECT, YOUR HONOR.

3 THE COURT: IT'S 12 PAGES.

4 MS. SISKIND: YES.

5 THE COURT: PAGE 1, PAGE 2, PAGE 3, PAGE 4.

6 PAGE 5 OF 12 HAS THE START OF THE BOXES. THE FIRST TWO
7 ITEMS ON PAGE 12 ARE INTEREST. WE'LL LEAVE THOSE.

8 PAGE 6 OF 12 IS NOT INTEREST ITEMS. THOSE SHOULD BE
9 REDACTED.

10 PAGE 7 OF 12, ITEMS 7 AND 8 ARE NOT INTEREST. THOSE
11 SHOULD BE REDACTED.

12 PAGE 9 AND 10 ARE INTEREST, AND THOSE SHOULD REMAIN.

13 MS. SISKIND: I'M SORRY.

14 THE COURT: ITEMS 9 AND 10.

15 MS. SISKIND: YES, YOUR HONOR.

16 THE COURT: PAGE 8 OF 12, THOSE SHOULD BE REDACTED
17 AS NOT INTEREST ITEMS.

18 THERE'S NO TOTAL PAGE IN THIS EXHIBIT.

19 MS. SISKIND: THAT'S CORRECT.

20 THE COURT: SO PAGE 9 WOULD REMAIN.

21 PAGE 10 WOULD REMAIN.

22 PAGE 11 WOULD REMAIN.

23 PAGE 12 WOULD REMAIN.

24 SHOULD WE MOVE TO 147?

25 MS. SISKIND: YES.

1 THE COURT: MR. SCHAINBAUM, WE'RE ON 147. PAGE 1.
2 PAGE 2.

3 PAGE 3 OF 18 IS BLANK. I DON'T KNOW IF THAT NEEDS TO
4 REMAIN.

5 PAGE 4 OF 18 WILL REMAIN.

6 PAGE 5 OF 18 WILL REMAIN.

7 PAGE 6 OF 18 HAS THE BOXES AGAIN. ITEMS 1 AND 2 ARE
8 INTEREST, THOSE WILL REMAIN. ITEM 3 ON THIS PAGE IS
9 NONEMPLOYEE COMPENSATION, THAT WILL BE REDACTED.

10 PAGE 7 OF 18 WILL BE REDACTED.

11 PAGE 8 OF 18, ITEM 12 WILL BE REDACTED. 13 AND 14 WILL
12 REMAIN. 15, 16, AND 17 WILL BE REDACTED.

13 PAGE 9 WILL BE REDACTED. ITEM 18 IS REDACTED.

14 PAGE 10 OF 18 IS BLANK. PAGE 11, 12.

15 PAGE 13 IS BLANK. 14, 15, 16.

16 PAGE 17 IS THE CHANGES TO RETURN. AGAIN, BEING CONSISTENT
17 WE WILL LEAVE IN THE FIRST BOX, THE INTEREST BOX, AND THE
18 SUMMARY OF PROPOSED CHANGES WILL REMAIN.

19 MR. SCHAINBAUM: RIGHT. YOUR HONOR, I WOULD ASK THE
20 GOVERNMENT IF THEY COULD GET THE LAST PAGE BECAUSE IT SEEMS
21 THAT EXHIBIT 146 --

22 THE COURT: THE LAST PAGE?

23 MR. SCHAINBAUM: YEAH, THE LAST PAGE OF 146 IS NOT
24 THERE, THE SUMMARY PAGE.

25 MS. SISKIND: YOUR HONOR, WHERE WE GOT THESE

1 EXHIBITS FROM IS THE DEFENSE EXHIBIT BINDERS. WE DIDN'T OBTAIN
2 THESE INDEPENDENTLY. WHEN WE GOT THEIR EXHIBITS BACK IN
3 FEBRUARY, THAT'S WHERE WE PULLED THESE FROM. SO IF THEIRS WERE
4 INCOMPLETE, OURS WERE AS WELL.

5 THE COURT: YOU HAVE IT, AND WE CAN ADD IT,
6 MR. SCHAINBAUM.

7 MR. SCHAINBAUM: YEAH, IF WE HAVE IT, WE'LL ADD IT.

8 THE COURT: 148. PAGE 1, 2, 3, 4.

9 PAGE 5 OF 14 HAS THE TWO INTEREST ITEMS. THOSE WILL
10 REMAIN.

11 PAGE 6, ITEM 3 INTEREST WILL REMAIN.

12 4, 5, 6, AND 7 WILL BE REDACTED.

13 PAGE 7, 8, 9, 10, 11, 12 ARE REDACTED.

14 PAGE 8, ALL OF THOSE ITEMS 13 THROUGH 17 ARE REDACTED.

15 PAGE 9, 18 AND 19 WILL REMAIN AS INTEREST ITEMS.

16 20, 21, AND 22 ARE REDACTED. 10, 11, 12, 13. 14 IS
17 BLANK. THERE IS NO SUMMARY PAGE IN THIS EXHIBIT.

18 I'M ON 149 NOW. 1, 2, 3. PAGE 4 OF 15 IS BLANK.

19 5. PAGE 6 OF 15, ITEMS 1, 2, 3 WILL REMAIN. ITEM 4 IS
20 REDACTED.

21 PAGE 7, ITEMS 5 THROUGH 12 ARE REDACTED.

22 PAGE 8, ITEM 13 THROUGH 17 ARE REDACTED. 18 AND 19 WILL
23 REMAIN.

24 PAGE 9, ITEMS 20 THROUGH 22 ARE REDACTED.

25 PAGE 10, 11, 12, 13, 14 WILL REMAIN.

1 PAGE 15 IS THE SUMMARY PAGE. ONLY THE INTEREST COLUMNS
2 AND CHANGES TO INCOME AND DEDUCTIONS WILL REMAIN. CHANGES TO
3 TAX COMPUTATION WILL BE REDACTED, AND THE SUMMARY OF PROPOSED
4 CHANGES WILL REMAIN.

5 150. 1, 2, 3, 4, PAGE 5, THOSE WILL REMAIN. PAGE 5 HAS
6 THE INTEREST, ITEMS 1 AND 2, THOSE WILL REMAIN.

7 PAGE 6, THOSE ITEMS WILL BE REDACTED.

8 PAGE 7 OF 14, ITEM 7 WILL BE REDACTED. 8 AND 9 WILL
9 REMAIN. ITEM 10 IS REDACTED.

10 PAGE 8, ITEMS 11 THROUGH 16 ARE REDACTED.

11 PAGE 9, ITEMS 17 THROUGH 22 ARE REDACTED.

12 PAGE 10, 23 THROUGH 26 ARE REDACTED.

13 PAGE 11 REMAINS.

14 12, 13, 14 REMAINS.

15 THERE IS NO SUMMARY ON THIS.

16 ITEM -- LET'S SEE. 150.

17 MS. SISKIND: EXHIBIT 151, YOUR HONOR?

18 MR. SCHAINBAUM: EXHIBIT 151?

19 THE COURT: YES. 151. IS THAT APRIL 13TH?

20 MS. SISKIND: YES, YOUR HONOR.

21 THE COURT: PAGE 1, PAGE 2, PAGE 3. PAGE 4 OF 18 IS
22 BLANK. PAGE 5.

23 PAGE 6 HAS THE SCHEDULES. ITEMS 1 AND 2 WILL REMAIN.

24 ITEM 3 WILL BE REDACTED.

25 PAGE 7, ITEMS 4, 5, 6 AND 7 ARE REDACTED. 8 AND 9 REMAIN.

1 PAGE 8, 10 THROUGH 18 ARE REDACTED.

2 PAGE 9 IS BLANK.

3 PAGE 10, 19 THROUGH 26 ARE REDACTED.

4 PAGE 11 REMAINS. 12, 13.

5 PAGE 14 IS BLANK.

6 15 AND 16 REMAINS.

7 PAGE 17 HAS THE FINAL COMPUTATIONS. THE INTEREST WILL
8 REMAIN IN THE FIRST BOX. AND CHANGES TO INCOME AND DEDUCTIONS
9 AND THE SUMMARY OF PROPOSED CHANGES BOX WILL REMAIN. THE OTHER
10 BOX WILL BE REDACTED.

11 PAGE 18 IS BLANK.

12 152. PAGE 1 WILL REMAIN.

13 PAGE 2 IS BLANK.

14 PAGE 3 WILL REMAIN. PAGE 4.

15 PAGE 5 IS BLANK.

16 PAGE 6 WILL REMAIN.

17 PAGE 7 HAS THE BOXES. ITEMS 1 AND 2 WILL REMAIN. 3 IS
18 REDACTED.

19 ON PAGE 8, ITEMS 4, 5, 6, AND 7 ARE REDACTED. 8 AND 9
20 REMAIN.

21 PAGE 9, 10 THROUGH 18 ARE REDACTED.

22 PAGE 10 IS BLANK.

23 PAGE 11, 19 THROUGH 26 ARE REDACTED.

24 PAGE 12 WILL REMAIN. 13, 14.

25 PAGE 15 IS BLANK.

1 PAGE 16 WILL REMAIN.

2 PAGE 17 IN THE FIRST BOX, CHANGES TO INCOME AND
3 DEDUCTIONS, INTEREST WILL REMAIN.

4 THE CHANGES TO COMPUTATION IS REDACTED, AND THE SUMMARY OF
5 PROPOSED CHANGES REMAINS.

6 ITEM 153. PAGE 1, PAGE 2, PAGE 3.

7 PAGE 4 OF 15 IS BLANK.

8 PAGE 5, ALL OF THOSE WILL REMAIN.

9 PAGE 6, ITEM 1 IS REDACTED AND 3 IS REDACTED.

10 PAGE 7, ITEMS 4 THROUGH 11 ARE REDACTED.

11 PAGE 8, ITEMS 12 THROUGH 16 ARE REDACTED.

12 PAGE 9 REMAINS. 10, 11, 12.

13 PAGE 13, THE FIRST BOX IS REDACTED, CHANGES TO INCOME
14 DEDUCTIONS. CHANGES TO TAX COMPUTATION IS REDACTED. THE
15 SUMMARY OF PROPOSED SUMMARY REMAINS.

16 PAGES 14 AND 15 ARE BLANK.

17 154 --

18 MS. SISKIND: I THINK THAT'S -- YEP, THAT WAS ALL.

19 THE COURT: YES. AND I THINK THAT CONCLUDES THE
20 REDACTIONS FOR THESE ITEMS.

21 AGAIN, THIS IS CONTINGENT ON THE TRANSCRIPTS BEING
22 INTRODUCED IN EVIDENCE, AND I DON'T KNOW WHICH OF YOU IS GOING
23 TO DO THAT.

24 MS. SISKIND: WE MAY JUST DO IT.

25 THE COURT: ALL RIGHT.

1 MS. SISKIND: WE'LL DECIDE THAT TONIGHT.

2 THE COURT: AND THEN YOU'LL DO THESE REDACTIONS,
3 MS. SISKIND, AND HAVE THOSE, AND HAVE THOSE TO MR. SCHAINBAUM
4 TOMORROW MORNING BEFORE WE BEGIN.

5 MS. SISKIND: YES, YOUR HONOR.

6 THE COURT: AND IF YOU WANT TO ARRIVE EARLY, THAT
7 WOULD BE GREAT SO THAT YOU CAN EXCHANGE THESE ITEMS.

8 AS I SAID, THE JURY WILL BE HERE AT 10:30. I'LL INVITE
9 YOU TO BE HERE AT 10:00 IF YOU CAN, AND MAYBE WE CAN RESOLVE IF
10 THERE ARE ANY OTHER ISSUES THAT WE NEED TO RESOLVE.

11 ANYTHING FURTHER?

12 MS. SISKIND: I DON'T BELIEVE SO.

13 MR. SCHAINBAUM: NO, UNLESS -- I JUST WANT TO MAKE
14 THE RECORD CLEAR THAT WE HAVE THE CONTINUING OBJECTION TO THE
15 EXHIBITS THAT YOU JUST WENT THROUGH AND WITH THE REDACTIONS.
16 IS IT 143 THROUGH -- SO WE HAVE A CONTINUING OBJECTION FROM
17 143, GOVERNMENT'S EXHIBITS 143 TO 153.

18 THE COURT: ALL RIGHT. SO NOTED. IT MAY BE ALSO
19 THAT I WILL ADVISE THE JURY TOMORROW, AND I'M HAPPY TO HEAR
20 FROM YOU TOMORROW MORNING, I MAY ADVISE THE JURY WITH A
21 LIMITING INSTRUCTION AS TO HOW THEY SHOULD TREAT THIS EVIDENCE
22 FOR THE ISSUE OF WILLFULNESS.

23 MS. SISKIND: AND IT MAY BE APPROPRIATE TO USE
24 SOMETHING SIMILAR TO THE LANGUAGE IN THE 404(B) INSTRUCTION
25 EVEN THOUGH THIS IS NOT BEING USED AS 404(B).

1 THE COURT: AND THAT'S WHAT I THINK I'LL PATTERN A
2 LIMITING INSTRUCTION ON, BUT IF YOU WANT TO PREPARE SOMETHING
3 TOMORROW MORNING FOR ME TO LOOK AT IT, I'M HAPPY TO LOOK AT IT.

4 ALL RIGHT. THANK YOU VERY MUCH FOR YOUR PATIENCE.

5 (COURT CONCLUDED AT 12:12 P.M.)
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076

DATED: SEPTEMBER 19, 2013